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सं. 33]

नई दिल्ली, अगस्त 13—अगस्त 19, 2017, शनिवार/श्रावण 22—श्रावण 28, 1939

No. 33]

NEW DELHI, AUGUST 13—AUGUST 19, 2017, SATURDAY/ SRAVANA 22—SRAVANA 28, 1939

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं

Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 11 अगस्त, 2017

का.आ. 1871.—भारतीय निर्यात-आयात बैंक अधिनियम, 1981 (1981 का 28) की धारा 5 की उप-धारा (2) के साथ पठित धारा 6 की उप-धारा 1(क) और उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, एतद्वारा, भारतीय निर्यात-आयात बैंक के उप-प्रबंध निदेशक (डीएमडी) श्री डेविड रस्कीना को पद का कार्यभार ग्रहण करने की तारीख से तीन वर्ष की अवधि के लिए अथवा अगले आदेशों तक, जो भी पहले हो, भारतीय निर्यात-आयात बैंक (एक्जिम बैंक) में प्रबंध निदेशक के पद पर नियुक्त करती है।

[फा.सं. 2/4/2017-आईएफ-1]

सौम्यजित धोप, अवर सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 11th August, 2017

S.O. 1871.—In exercise of the powers conferred by sub-section (1)(a) and sub-section (2) of Section 6 read with sub-section (2) of Section 5 of the Export-Import Bank of India Act, 1981 (28 of 1981), the Central Government hereby appoints Shri David Rasquinha, Deputy Managing Director (DMD), Export-Import Bank of India (Exim Bank) as Managing Director (MD), Export-Import Bank of India (Exim Bank) for a period of three years from the date of taking over charge of the post, or until further orders, whichever is earlier.

[F.No. 2/4/2017-IF-I]

SOUMYAJIT GHOSH, Under Secy.

विदेश मंत्रालय

(सी.पी.वी. प्रभाग)

नई दिल्ली, 31 जुलाई, 2017

का.आ. 1872.—राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश।

एतद्वारा, केंद्र सरकार भारत के प्रधान कोंसलावास, जेद्वाह में श्री तपन चौधुरी, सहायक अनुभाग अधिकारी और श्री देवेन्द्र कुमार, सहायक अनुभाग अधिकारी को दिनांक 31 जुलाई, 2017 से सहायक कोंसुलर अधिकारी के तौर पर कोंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[सं. टी-4330/01/2015]

प्रकाश चन्द, निदेशक (कोंसुलर)

MINISTRY OF EXTERNAL AFFAIRS

(CPV Division)

New Delhi, the 31st July, 2017

S.O. 1872.—Statutory Order in pursuance of clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Shri Tapan Chowdhury, Assistant Section Officer and Shri Devender Kumar, Assistant Section Officer as Assistant Consular Officers in Consulate General of India, Jeddah to perform the Consular services with effect from 31st July, 2017.

[No. T-4330/01/2015]

PRAKASH CHAND, Director (Consular)

नई दिल्ली, 1 अगस्त, 2017

का.आ. 1873.—राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश।

एतद्वारा, केंद्र सरकार भारत के उच्चायोग दूतावास, ब्रूनेई दारुस्सलाम में श्री अमरेंद्र कुमार अमरेश, सहायक अनुभाग अधिकारी को दिनांक 1 अगस्त, 2017 से सहायक कोंसुलर अधिकारी के तौर पर कोंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[सं. टी-4330/01/2017]

प्रकाश चन्द, निदेशक (कोंसुलर)

New Delhi, the 1st August, 2017

S.O. 1873.—Statutory Order in pursuance of clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Shri Amrendra Kumar Amresh, Assistant Section Officer as Assistant Consular Officer in High Commission of India, Brunei Darussalam to perform the Consular services with effect from 1st August, 2017.

[No. T-4330/01/2017]

PRAKASH CHAND, Director (Consular)

नई दिल्ली, 8 अगस्त, 2017

का.आ. 1874.—राजनयिक और कोंसुलर अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश।

एतद्वारा, केंद्र सरकार भारत के दूतावास, बहीन में श्री मोनोतोष सज्जन, सहायक अनुभाग अधिकारी को दिनांक 8 अगस्त, 2017 से सहायक कोंसुलर अधिकारी के तौर पर कोंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[सं. टी-4330/01/2017]

प्रकाश चन्द, निदेशक (कोंसुलर)

New Delhi, the 8th August, 2017

S.O. 1874.—Statutory Order in pursuance of clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Shri Monotosh Sajjan, Assistant Section Officer as Assistant Consular Officer in Embassy of India, Bahrain to perform the Consular services with effect from 8th August, 2017.

[No. T-4330/01/2017]

PRAKASH CHAND, Director (Consular)

वाणिज्य एवं उद्योग मंत्रालय

(वाणिज्य विभाग)

नई दिल्ली, 10 अगस्त, 2017

का.आ. 1875.—केन्द्रीय सरकार, निर्यात (गुणवत्ता नियंत्रण एवं निरीक्षण) नियम, 1964 के नियम 12, के उपनियम (2) के साथ पठित, निर्यात (गुणवत्ता नियंत्रण एवं निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स मिनरल्स लैब सर्विसेज प्राइवेट लिमिटेड, दुर्गाचक कॉलोनी, ब्लॉक- एफ, प्लाट संख्या 17, दूसरी मंजिल, पोस्ट एवं थाना- दुर्गाचक, जिला- मेदिनीपुर पूर्व, पश्चिम बंगाल- 721602, को इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से तीन वर्ष की अवधि के लिए भारत सरकार के शासकीय राजपत्र भाग-II, खण्ड-3, उप-खण्ड (ii) में दिनांक 20 दिसम्बर, 1965 की अधिसूचना सं. का.आ. 3975 के तहत प्रकाशित अधिसूचना में उपावद्ध अनुसूचियों में विनिर्दिष्ट खनिज और अयस्क समूह-I, अर्थात् लौह अयस्क का निर्यात से पूर्व निम्नलिखित शर्तों के अधीन हल्दिया पत्तन में उक्त अयस्क का निरीक्षण करने के लिए एक अभिकरण के रूप में मान्यता देती है, अर्थात् :

- (i) यह अभिकरण, शासकीय राजपत्र भाग-II, खण्ड-3, उप-खण्ड (ii) में दिनांक 20 दिसम्बर, 1965 में प्रकाशित अधिसूचना सं. का.आ. 3977 में विनिर्दिष्ट खनिज और अयस्क समूह-I का निर्यात (निरीक्षण) नियम, 1965 के नियम 4 के अधीन निरीक्षण की पद्धति की जाँच करने के लिये निर्यात निरीक्षण परिषद् द्वारा निमित्त नामनिर्दिष्ट अधिकारियों को पर्याप्त सुविधाएं देगी; और

(ii) यह अभिकरण, इस अधिसूचना के अधीन अपने कार्यों के पालन में निदेशक (निरीक्षण और गुणवत्ता नियंत्रण) निर्यात निरीक्षण परिषद् द्वारा समय-समय पर लिखित रूप में दिए गए ऐसे निर्देशों से आबद्ध होगा।

[फा. सं. के-16014/11/2017-निर्यात निरीक्षण]

संतोष कुमार सारंगी, संयुक्त सचिव

MINISTRY OF COMMERCE AND INDUSTRY

(Department of Commerce)

New Delhi, the 10th August, 2017

S.O. 1875.—In exercise of the powers conferred by sub-section (1) of section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963) read with sub-rule (2) of rule 12 of the Export (Quality Control and Inspection) Rules, 1964, the Central Government hereby recognizes M/s. Minerals Lab Services Pvt. Ltd., Durgachak Colony, Block-F, Plot No.17, 2nd Floor, P.O. and P.S.-Durgachak, District-Purba Mrdinipur, West Bengal – 721602, as an agency (hereinafter referred to as the said agency), for a period of three years from the date of publication of this notification, for the inspection of Iron Ore specified at serial number 2 under the heading Minerals and Ores – Group I, in the Schedule to the notification number S.O. 3975, dated the 20th December, 1965, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), dated the 20th December, 1965, prior to export of the said Ore at Haldia Port, subject to the following conditions, namely: -

- (i) the said agency shall give adequate facilities to the officers nominated by the Export Inspection Council in this behalf to carry out the inspection as per the procedure specified under rule 4 of the Export of Minerals and Ores - Group I (Inspection) Rules, 1965, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), vide notification number S.O. 3977, dated the 20th December, 1965;
- (ii) the said agency in the performance of its function under this notification shall be bound by such directions as the Director (Inspection and Quality Control), Export Inspection Council, may give in writing from time to time.

[F.No. K-16014/11/2017-Export Inspection]

SANTOSH KUMAR SARANGI, Jt. Secy.

विद्युत मंत्रालय

नई दिल्ली, 14 अगस्त, 2017

का.आ. 1876.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में, विद्युत मंत्रालय के प्रशासनिक नियंत्रणाधीन बीबीएमबी के निम्नलिखित कार्यालयों, जिनके 80 प्रतिशत कर्मचारीवृद्धि ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को एतद्वारा अधिसूचित करती है :

1. निदेशक, पी एंड डी (टीएस), बीबीएमबी, चंडीगढ़
2. निदेशक, पी एंड सी, बीबीएमबी, चंडीगढ़
3. वरिष्ठ कार्यकारी अधियंता, सीसी मंडल, बीबीएमबी, पानीपत
4. वरिष्ठ कार्यकारी अधियंता, सीसी मंडल, बीबीएमबी, नंगल
5. उप मुख्य अधियंता, ओ एंड एम सर्कल, बीबीएमबी, भिवानी
6. वरिष्ठ कार्यकारी अधियंता, ओ एंड एम मंडल, बीबीएमबी, भिवानी
7. वरिष्ठ कार्यकारी अधियंता, ओ एंड एम मंडल, बीबीएमबी, हिसार
8. वरिष्ठ कार्यकारी अधियंता, ओ एंड एम मंडल, बीबीएमबी, बल्लभगढ़

9. अधीक्षण अभियंता, ओ एंड एम सर्कल, बीबीएमबी, पानीपत
10. वरिष्ठ कार्यकारी अभियंता, ओ एंड एम मंडल, बीबीएमबी, दिल्ली
11. वरिष्ठ कार्यकारी अभियंता, ओ एंड एम मंडल, बीबीएमबी, पानीपत
12. वरिष्ठ कार्यकारी अभियंता, ओ एंड एम मंडल, बीबीएमबी, कुरुक्षेत्र
13. वरिष्ठ कार्यकारी अभियंता, बीबीएमबी, 400 केवी टीएल मंडल, धूलकोट
14. वरिष्ठ कार्यकारी अभियंता, ओ एंड एम मंडल, बीबीएमबी, जमालपुर
15. वरिष्ठ कार्यकारी अभियंता, ओ एंड एम मंडल, बीबीएमबी, जालंधर
16. वरिष्ठ कार्यकारी अभियंता, ओ एंड एम मंडल, बीबीएमबी, धूलकोट
17. वरिष्ठ कार्यकारी अभियंता, ओ एंड एम मंडल, बीबीएमबी, जगाधरी

[सं. 11017/10/2013-हिंदी]

अंजू भल्ला, संयुक्त सचिव (प्रशा.)

MINISTRY OF POWER

New Delhi, the 14th August, 2017

S.O. 1876.—In pursuance of Sub-rule (4) of Rule 10 of the Official Languages (Use for Official Purpose of the Union) Rules, 1976, the Central Government hereby notify following office of the BBMB under the Administrative Control of Ministry of Power, where 80% of the staff have acquired working knowledge of Hindi :

1. Director, P&D (TS), BBMB, Chandigarh
2. Director, P&C, BBMB, Chandigarh
3. Senior Executive Engineer, CC Division, BBMB, Panipat
4. Senior Executive Engineer, CC Division, BBMB, Nangal
5. Deputy Chief Engineer, O&M Circle, BBMB, Bhiwani
6. Senior Executive Engineer, O&M Division, BBMB, Bhiwani
7. Senior Executive Engineer, O&M Division, BBMB, Hisar
8. Senior Executive Engineer, O&M Division, BBMB, Ballabgharh
9. Suprintending Engineer, O&M Circle, BBMB, Panipat
10. Senior Executive Engineer, O&M Division, BBMB, Delhi
11. Senior Executive Engineer, O&M Division, BBMB, Panipat
12. Senior Executive Engineer, O&M Division, BBMB, Kurukshetra
13. Senior Executive Engineer, BBMB, 400kv TL Division, Dhoolkot
14. Senior Executive Engineer, O&M Division, BBMB, Jamalpur
15. Senior Executive Engineer, O&M Division, BBMB, Jalandhar
16. Senior Executive Engineer, O&M Division, BBMB, Dhoolkot
17. Senior Executive Engineer, O&M Division, BBMB, Jagadhari

[No. 11017/10/2013- Hindi]

ANJU BHALLA, Jt. Secy. (Admn.)

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 27 जुलाई, 2017

का.आ. 1877.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आयुक्त, सीमा शुल्क और केन्द्रीय उत्पाद शुल्क विभाग, हैदराबाद – चतुर्थ आयुक्त कार्यालय, बशीरबाग, हैदराबाद एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 1/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.07.2017 को प्राप्त हुआ था।

[सं. एल-42012/49/2008-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 27th July, 2017

S.O. 1877.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID No. 1/2009) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in Annexure, in the industrial dispute between the employers in relation to the Commissioner, Customs & Central Excise Department, Hyderabad – IV Commissionerate, Basheerbagh, Hyderabad and their workman, which were received by the Central Government on 12.07.2017.

[No. L-42012/49/2008-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding OfficerDated : the 15th day of June, 2017

INDUSTRIAL DISPUTE No. 1/2009

Between :

Sri M. Kiran Kumar,
C/o Md. Akbar Ali,
H.No.9-3-104, Harizan Basti,
Hasmathpet, Old Bawnpally,
Secunderabad – 500 009

...Petitioner

AND

The Commissioner,
Customs & Central Excise Department,
Hyderabad-IV Commissionerate,
Kendriya Shulk Bhawan,
Basheer Bagh, Lalbahadoor Stadium Road,
Basheerbagh, Hyderabad

...Respondent

Appearances :

For the Petitioner : Sri William Burra, Advocate

For the Respondent : M/s. G. Jaya Prakash Babu, Advocate

AWARD

The Government of India, Ministry of Labour by its order No. L-42012/49/2008-IR(DU) dated 16.1.2009 referred the following dispute between the management of Central Excise & Customs Department, Hyderabad and their workman under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal. The reference is,

SCHEDULE

“Whether the action of the Central Excise Department, Hyderabad-IV Commissionerate, Hyderabad in terminating the services of Shri M. Kiran Kumar Casual/contingent worker and subsequently engaging him as contract worker from 2004 is proper and justified? If not, to what relief the concerned workman is entitled to?”

The reference is numbered in this Tribunal as I.D. No. 1/2009 and notices were issued to the parties concerned.

2. The Petitioner appeared before this Tribunal and filed claim statement. Respondent management also appeared and filed their counter.

3. When the case stands posted for Petitioner's evidence, the Petitioner workman found absent. This Tribunal adjourned the case for several dates to secure the presence of the Petitioner. But, inspite of several reminders the Petitioner failed to attend his case and Counsel for the Petitioner fairly submitted that Petitioner is not interested to attend the Court, which clearly indicates that perhaps the dispute of the workman has already been settled and the Petitioner has got nothing to claim. Hence, a 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 15th day of June, 2017.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 27 जुलाई, 2017

का.आ. 1878.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार प्रबंधक (प्रशासन), राष्ट्रीय सीडीस निगम लिमिटेड, भारत सरकार के उपक्रम, वीज भवन, नई दिल्ली व अन्य एवं उनके कर्मचारी के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 86/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.07.2017 को प्राप्त हुआ था।

[सं. एल-42025/03/2017-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 27th July, 2017

S.O. 1878.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (LC No. 86/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in Annexure, in the industrial dispute between the employers in relation to the Manager (Administration), National Seeds Corporation Ltd., A Govt. of India Undertaking, VEEZ Bhavan, New Delhi & Others and their workman, which were received by the Central Government on 12.07.2017.

[No. L-42025/03/2017-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated : the 12th day of June, 2017

INDUSTRIAL DISPUTE No. L.C. 86/2008

Between :

Ms. J. Aruna,
 D/o Samuel,
 C/o Sri P. Sridhar Rao,
 Advocate, F-16, HIG-1,
 Block-2, Baghlingampally,
 Near Ambedkar College,
 Hyderabad-44

...Petitioner

AND

1. The Manager (Administration),
 National Seeds Corporation Ltd.,
 A Government of India Undertaking,
 VEEZ Bhavan, Pusa Complex,
 New Delhi – 110 012.
2. The Regional Manager,
 National Seeds Corporation Ltd.,
 Jyothi Nagar, North Lalaguda,
 Secunderabad – 500 017.
3. The Area Manager,
 National Seeds Corporation Ltd.,
 Post. Village & Mandal, Madikonda,
 Dist. Warangal 506 142

...Respondents

Appearances :

For the Petitioner : M/s. P. Sridhar Rao, Advocates
 For the Respondents : Sri K. Lakshmi Narasimha, Advocate

AWARD

This is a petition filed under section 2(A)(2) of the Industrial Disputes Act 1947 with a prayer to pass an award against the Respondents by setting aside the oral order dated 31.3.2007 terminating the petitioner/workwoman from service and engaging her services on contract basis with effect from 1.4.2007, as illegal, arbitrary and unconstitutional and consequently direct the management to reinstate the workman with back wages and continuity of service with attendant benefits. The case is registered and numbered as LC. No. 86/2008 and notices were issued to the parties concerned.

2. The Respondent has filed a detailed counter denying the allegations made by the petitioner. The case is posted to 8.2.2012 for petitioner's evidence. At the request of the petitioner's counsel the case is adjourned to different dates from 5.4.2012 to 13.4. 2017.

3. Since 5.4.2012, there is no representation on behalf of the petitioner nor she adduced any evidence on her behalf to prove her case. It is not wise to defer the matter to any other date. Non- appearance of the parties clearly indicates that perhaps the matter has been settled between the parties and there is no dispute exists between the parties. It is felt that the Petitioner is not interested in pursuing the dispute. In the circumstances stated above the case is closed and 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 12th day of June, 2017.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 27 जुलाई, 2017

का.आ. 1879.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार प्रबंधक (प्रशासन), राष्ट्रीय सीड्स निगम लिमिटेड, भारत सरकार के उपक्रम, वीज भवन, नई दिल्ली व अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 87/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.07.2017 को प्राप्त हुआ था।

[सं. एल-42025/03/2017-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 27th July, 2017

S.O. 1879.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (LC No. 87/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in Annexure, in the industrial dispute between the employers in relation to the Manager (Administration), National Seeds Corporation Ltd., A Govt. of India Undertaking, VEEZ Bhavan, New Delhi & Others and their workman, which were received by the Central Government on 12.07.2017.

[No. L-42025/03/2017-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated : the 12th day of June, 2017

INDUSTRIAL DISPUTE L.C. No. 87/2008

Between :

Smt. G. Shyamalamma,
W/o Yellaiah,
C/o Sri P. Sridhar Rao,
Advocate, F-16, HIG-1,
Block-2, Baghlingampally,
Near Ambedkar College,
Hyderabad-44

...Petitioner

AND

1. The Manager (Administration),
National Seeds Corporation Ltd.,
A Government of India Undertaking,
VEEZ Bhavan, Pusa Complex,
New Delhi – 110 012.
2. The Regional Manager,
National Seeds Corporation Ltd.,
Jyothi Nagar, North Lalaguda,
Secunderabad – 500 017.
3. The Area Manager,
National Seeds Corporation Ltd.,
Post. Village & Mandal, Madikonda,
Dist. Warangal 506 142

...Respondents

Appearances :

For the Petitioner : M/s. P. Sridhar Rao, Advocates

For the Respondents : Sri K. Lakshmi Narasimha, Advocate

AWARD

This is a petition filed under section 2(A)(2) of the Industrial Disputes Act 1947 with a prayer to pass an award against the Respondents by setting aside the oral order dated 31.3.2007 terminating the petitioner/workwoman from service and engaging her services on contract basis with effect from 1.4.2007, as illegal, arbitrary and unconstitutional and consequently direct the management to reinstate the workman with back wages and continuity of service with attendant benefits. The case is registered and numbered as LC. No. 87/2008 and notices were issued to the parties concerned.

2. The Respondent has filed a detailed counter denying the allegations made by the petitioner. The case is posted to 8.2.2012 for petitioner's evidence. At the request of the petitioner's counsel the case is adjourned to different dates from 5.4.2012 to 13.4. 2017.

3. Since 5.4.2012, there is no representation on behalf of the petitioner nor she adduced any evidence on her behalf to prove her case. It is not wise to defer the matter to any other date. Non- appearance of the parties clearly indicates that perhaps the matter has been settled between the parties and there is no dispute exists between the parties. It is felt that the Petitioner is not interested in pursuing the dispute. In the circumstances stated above the case is closed and 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 12th day of June, 2017.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 27 जुलाई, 2017

का.आ. 1880.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार प्रबंधक (प्रशासन), राष्ट्रीय सीड्स निगम लिमिटेड, भारत सरकार के उपक्रम, वीज भवन, नई दिल्ली व अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 88/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.07.2017 को प्राप्त हुआ था।

[सं. एल-42025/03/2017-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 27th July, 2017

S.O. 1880.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (LC No. 88/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in Annexure, in the industrial dispute between the employers in relation to the Manager (Administration), National Seeds Corporation Ltd., A Govt. of India Undertaking, VEEZ Bhavan, New Delhi & Others and their workman, which were received by the Central Government on 12.07.2017.

[No. L-42025/03/2017-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated : the 12th day of June, 2017

INDUSTRIAL DISPUTE L.C. No. 88/2008

Between :

Smt. J. Yada Laxmi,
D/o Samuel,
C/o Sri P. Sridhar Rao,
Advocate, F-16, HIG-1,
Block-2, Baghlingampally,
Near Ambedkar College,
Hyderabad-44

...Petitioner

AND

1. The Manager (Administration),
National Seeds Corporation Ltd.,
A Government of India Undertaking,
VEEZ Bhavan, Pusa Complex,
New Delhi – 110 012.
2. The Regional Manager,
National Seeds Corporation Ltd.,
Jyothi Nagar, North Lalaguda,
Secunderabad – 500 017.
3. The Area Manager,
National Seeds Corporation Ltd.,
Post. Village & Mandal, Madikonda,
Dist. Warangal 506 142

...Respondents

Appearances :

For the Petitioner : M/s. P. Sridhar Rao, Advocates
For the Respondents : Sri K. Lakshmi Narasimha, Advocate

AWARD

This is a petition filed under section 2(A)(2) of the Industrial Disputes Act 1947 with a prayer to pass an award against the Respondents by setting aside the oral order dated 31.3.2007 terminating the petitioner/workwoman from service and engaging her services on contract basis with effect from 1.4.2007, as illegal, arbitrary and unconstitutional and consequently direct the management to reinstate the workman with back wages and continuity of service with attendant benefits. The case is registered and numbered as LC. No. 88/2008 and notices were issued to the parties concerned.

2. The Respondent has filed a detailed counter denying the allegations made by the petitioner. The case is posted to 8.2.2012 for petitioner's evidence. At the request of the petitioner's counsel the case is adjourned to different dates from 5.4.2012 to 13.4. 2017.

3. Since 5.4.2012, there is no representation on behalf of the petitioner nor she adduced any evidence on her behalf to prove her case. It is not wise to defer the matter to any other date. Non- appearance of the parties clearly indicates that perhaps the matter has been settled between the parties and there is no dispute exists between the parties. It is felt that the Petitioner is not interested in pursuing the dispute. In the circumstances stated above the case is closed and 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 12th day of June, 2017.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 27 जुलाई, 2017

का.आ. 1881.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार प्रबंधक (प्रशासन), राष्ट्रीय सीड़िस निगम लिमिटेड, भारत सरकार के उपक्रम, वीज भवन, नई दिल्ली व अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 89/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.07.2017 को प्राप्त हुआ था।

[सं. एल-42025/03/2017-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 27th July, 2017

S.O. 1881.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (LC No. 89/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in Annexure, in the industrial dispute between the employers in relation to the Manager (Administration), National Seeds Corporation Ltd., A Govt. of India Undertaking, VEEZ Bhavan, New Delhi & Others and their workman, which were received by the Central Government on 12.07.2017.

[No. L-42025/03/2017-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated : the 12th day of June, 2017

INDUSTRIAL DISPUTE L.C. No. 89/2008

Between :

Smt. G. Jayamma,
W/o Pochaiah,
C/o Sri P. Sridhar Rao,
Advocate, F-16, HIG-1,
Block-2, Baghlingampally,
Near Ambedkar College,
Hyderabad-44

...Petitioner

AND

1. The Manger (Administration),
National Seeds Corporation Ltd.,
A Government of India Undertaking,
VEEZ Bhavan, Pusa Complex,
New Delhi – 110 012.
2. The Regional Manager,
National Seeds Corporation Ltd.,
Jyothi Nagar, North Lalaguda,
Secunderabad – 500 017.
3. The Area Manager,
National Seeds Corporation Ltd.,
Post. Village & Mandal, Madikonda,
Dist. Warangal 506 142

...Respondents

Appearances :

For the Petitioner : M/s. P. Sridhar Rao, Advocates
For the Respondents : Sri K. Lakshmi Narasimha, Advocate

AWARD

This is a petition filed under section 2(A)(2) of the Industrial Disputes Act 1947 with a prayer to pass an award against the Respondents by setting aside the oral order dated 31.3.2007 terminating the petitioner/workwoman from service and engaging her services on contract basis with effect from 1.4.2007, as illegal, arbitrary and unconstitutional and consequently direct the management to reinstate the workman with back wages and continuity of service with attendant benefits. The case is registered and numbered as LC. No. 89/2008 and notices were issued to the parties concerned.

2. The Respondent has filed a detailed counter denying the allegations made by the petitioner. The case is posted to 8.2.2012 for petitioner's evidence. At the request of the petitioner's counsel the case is adjourned to different dates from 5.4.2012 to 13.4. 2017.

3. Since 5.4.2012, there is no representation on behalf of the petitioner nor she adduced any evidence on her behalf to prove her case. It is not wise to defer the matter to any other date. Non- appearance of the parties clearly indicates that perhaps the matter has been settled between the parties and there is no dispute exists between the parties. It is felt that the Petitioner is not interested in pursuing the dispute. In the circumstances stated above the case is closed and 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 12th day of June, 2017.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 27 जुलाई, 2017

का.आ. 1882.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार प्रबंधक (प्रशासन), राष्ट्रीय सीडीस निगम लिमिटेड, भारत सरकार के उपक्रम, वीज भवन, नई दिल्ली व अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 90/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.07.2017 को प्राप्त हुआ था।

[सं. एल-42025/03/2017-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 27th July, 2017

S.O. 1882.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (LC No. 90/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in Annexure, in the industrial dispute between the employers in relation to the Manager (Administration), National Seeds Corporation Ltd., A Govt. of India Undertaking, VEEZ Bhavan, New Delhi & Others and their workman, which were received by the Central Government on 12.07.2017.

[No. L-42025/03/2017-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD**

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated : the 13th day of June, 2017

INDUSTRIAL DISPUTE L.C. No. 90/2008

Between :

Smt. T. Shantha,
W/o Anjaiah,
C/o Sri P. Sridhar Rao,
Advocate, F-16, HIG-1,
Block-2, Baghlingampally,
Near Ambedkar College,
Hyderabad-44

...Petitioner

AND

1. The Manager (Administration),
National Seeds Corporation Ltd.,
A Government of India Undertaking,
VEEZ Bhavan, Pusa Complex,
New Delhi – 110 012.
2. The Regional Manager,
National Seeds Corporation Ltd.,
Jyothi Nagar, North Lalaguda,
Secunderabad – 500 017.
3. The Area Manager,
National Seeds Corporation Ltd.,
Post. Village & Mandal, Madikonda,
Dist. Warangal 506 142

...Respondents

Appearances :

For the Petitioner : M/s. P. Sridhar Rao, Advocates
For the Respondents : Sri K. Lakshmi Narasimha, Advocate

AWARD

This is a petition filed under section 2(A)(2) of the Industrial Disputes Act 1947 with a prayer to pass an award against the Respondents by setting aside the oral order dated 31.3.2007 terminating the petitioner/workwoman from service and engaging her services on contract basis with effect from 1.4.2007, as illegal, arbitrary and unconstitutional and consequently direct the management to reinstate the workman with back wages and continuity of service with attendant benefits. The case is registered and numbered as LC. No. 90/2008 and notices were issued to the parties concerned.

2. The Respondent has filed a detailed counter denying the allegations made by the petitioner. The case is posted to 8.2.2012 for petitioner's evidence. At the request of the petitioner's counsel the case is adjourned to different dates from 5.4.2012 to 13.4. 2017.

3. Since 5.4.2012, there is no representation on behalf of the petitioner nor she adduced any evidence on her behalf to prove her case. It is not wise to defer the matter to any other date. Non- appearance of the parties clearly indicates that perhaps the matter has been settled between the parties and there is no dispute exists between the parties. It is felt that the Petitioner is not interested in pursuing the dispute. In the circumstances stated above the case is closed and 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 13th day of June, 2017.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 27 जुलाई, 2017

का.आ. 1883.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार प्रबंधक (प्रशासन), राष्ट्रीय सीडीस निगम लिमिटेड, भारत सरकार के उपक्रम, वीज भवन, नई दिल्ली व अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 91/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.07.2017 को प्राप्त हुआ था।

[सं. एल-42025/03/2017-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 27th July, 2017

S.O. 1883.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (LC No. 91/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in Annexure, in the industrial dispute between the employers in relation to the Manager (Administration), National Seeds Corporation Ltd., A Govt. of India Undertaking, VEEZ Bhavan, New Delhi & Others and their workman, which were received by the Central Government on 12.07.2017.

[No. L-42025/03/2017-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated : the 13th day of June, 2017

INDUSTRIAL DISPUTE L.C. No. 91/2008

Between :

Smt. S. Pochamma,
W/o Chandraiah,
C/o Sri P. Sridhar Rao,
Advocate, F-16, HIG-1,
Block-2, Baghlingampally,
Near Ambedkar College,
Hyderabad-44

...Petitioner

AND

1. The Manger (Administration),
National Seeds Corporation Ltd.,
A Government of India Undertaking,
VEEZ Bhavan, Pusa Complex,
New Delhi – 110 012.
2. The Regional Manager,
National Seeds Corporation Ltd.,
Jyothi Nagar, North Lalaguda,
Secunderabad – 500 017.
3. The Area Manager,
National Seeds Corporation Ltd.,
Post. Village & Mandal, Madikonda,
Dist. Warangal 506 142

...Respondents

Appearances :

For the Petitioner : M/s. P. Sridhar Rao, Advocates

For the Respondents : Sri K. Lakshmi Narasimha, Advocate

AWARD

This is a petition filed under section 2(A)(2) of the Industrial Disputes Act 1947 with a prayer to pass an award against the Respondents by setting aside the oral order dated 31.3.2007 terminating the petitioner/workwoman from service and engaging her services on contract basis with effect from 1.4.2007, as illegal, arbitrary and unconstitutional and consequently direct the management to reinstate the workman with back wages and continuity of service with attendant benefits. The case is registered and numbered as LC. No. 91/2008 and notices were issued to the parties concerned.

2. The Respondent has filed a detailed counter denying the allegations made by the petitioner. The case is posted to 8.2.2012 for petitioner's evidence. At the request of the petitioner's counsel the case is adjourned to different dates from 5.4.2012 to 13.4. 2017.

3. Since 5.4.2012, there is no representation on behalf of the petitioner nor she adduced any evidence on her behalf to prove her case. It is not wise to defer the matter to any other date. Non- appearance of the parties clearly indicates that perhaps the matter has been settled between the parties and there is no dispute exists between the parties. It is felt that the Petitioner is not interested in pursuing the dispute. In the circumstances stated above the case is closed and 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 13th day of June, 2017.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 27 जुलाई, 2017

का.आ. 1884.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार प्रबंधक (प्रशासन), राष्ट्रीय सीड्स निगम लिमिटेड, भारत सरकार के उपक्रम, वीज भवन, नई दिल्ली व अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 92/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.07.2017 को प्राप्त हुआ था।

[सं. एल-42025/03/2017-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 27th July, 2017

S.O. 1884.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (LC No. 92/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in Annexure, in the industrial dispute between the employers in relation to the Manager (Administration), National Seeds Corporation Ltd., A Govt. of India Undertaking, VEEZ Bhavan, New Delhi & Others and their workman, which were received by the Central Government on 12.07.2017.

[No. L-42025/03/2017-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated : the 13th day of June, 2017

INDUSTRIAL DISPUTE L.C. No. 92/2008

Between :

Smt. J. Sujana,
D/o Samuel,
C/o Sri P. Sridhar Rao,
Advocate, F-16, HIG-1,
Block-2, Baghlingampally,
Near Ambedkar College,
Hyderabad-44

...Petitioner

AND

1. The Manager (Administration),
National Seeds Corporation Ltd.,
A Government of India Undertaking,
VEEZ Bhavan, Pusa Complex,
New Delhi – 110 012.
2. The Regional Manager,
National Seeds Corporation Ltd.,
Jyothi Nagar, North Lalaguda,
Secunderabad – 500 017.
3. The Area Manager,
National Seeds Corporation Ltd.,
Post. Village & Mandal, Madikonda,
Dist. Warangal 506 142

...Respondents

Appearances :

For the Petitioner : M/s. P. Sridhar Rao, Advocates
For the Respondents : Sri K. Lakshmi Narasimha, Advocate

AWARD

This is a petition filed under section 2(A)(2) of the Industrial Disputes Act 1947 with a prayer to pass an award against the Respondents by setting aside the oral order dated 31.3.2007 terminating the petitioner/workwoman from service and engaging her services on contract basis with effect from 1.4.2007, as illegal, arbitrary and unconstitutional and consequently direct the management to reinstate the workman with back wages and continuity of service with attendant benefits. The case is registered and numbered as LC. No. 92/2008 and notices were issued to the parties concerned.

2. The Respondent has filed a detailed counter denying the allegations made by the petitioner. The case is posted to 8.2.2012 for petitioner's evidence. At the request of the petitioner's counsel the case is adjourned to different dates from 5.4.2012 to 13.4. 2017.

3. Since 5.4.2012, there is no representation on behalf of the petitioner nor she adduced any evidence on her behalf to prove her case. It is not wise to defer the matter to any other date. Non- appearance of the parties clearly indicates that perhaps the matter has been settled between the parties and there is no dispute exists between the parties. It is felt that the Petitioner is not interested in pursuing the dispute. In the circumstances stated above the case is closed and 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant and corrected by me on this the 13th day of June, 2017.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner

NIL

Witnesses examined for the Respondent

NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 9 अगस्त, 2017

का.आ. 1885.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, नई दिल्ली के पंचाट (संदर्भ सं. 263/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.08.2017 को प्राप्त हुआ था।

[सं. एल-12011/122/2006-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 9th August, 2017

S.O. 1885.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 263/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure in the Industrial Dispute between the management of Syndicate Bank and their workmen, received by the Central Government on 09.08.2017.

[No. L-12011/122/2006-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

ID No. 263/2011

The President,
Syndicate Bank Staff Association,
C/o BMS, Central Office, Ram Naresh Bhawan,
Tilak Galim, Paharganj,
New Delhi – 110 051

...Workman

Versus

The Assistant General Manager,
Syndicate Bank,
GMO, Sarojini House, 6 Bhagwan Dass Road,
New Delhi – 110 001

...Management

AWARD

In this case, a reference was received by Central Government Industrial Tribunal cum Labour Court No.II, New Delhi vide order No.L-12011/122/2006-IR(B-II) dated 01.05.2007 from Ministry of Labour, Government of India for adjudication of an industrial dispute, terms of which are as under:

“Whether the action of the management of Syndicate Bank in imposing punishment of compulsory retirement upon Shri V.K.Jain, S/o Shri B.S. Jain is legal and justified? If not, to what relief the concerned workman entitled to?”

2. Both parties were put to notice and Shri V.K. Jain, (in short the claimant) filed statement of claim with the averment that he was appointed as clerk in Vikaspuri branch on 22.02.1999. He was posted at Vikaspuri branch where he served till the date of his punishment of compulsory retirement awarded to him in respect of charge sheet served upon the claimant on 20.07.2004 wherein it was alleged that SB account No.3411 was opened in the joint name of Ms.Jaya Jain and Shri Rakesh Kumar Jain at Vikaspuri branch on 11.12.2000. Later on FD receipt bearing No.786813/314/99 dated 22.02.1994 for a sum of Rs.28,262.00 issued by Punjab National Bank, Pitampura branch, Delhi was collected through the said account. This account was opened when Ms.Jaya Jain and Shri Rakesh Kumar Jain were living together. Proceeds of the FDR were also collected when they were staying together. The said account was closed in the month of April 2001.

3. It is also alleged by the claimant that in fact that the claimant was living separately alongwith his family but he had to bear the brunt of wild and baseless allegations of Ms.Jaya Jain. It is further alleged that Ms.Jaya Jain took a totally contradictory and opposite stand in the complaint lodged by her with crime against women cell wherein she had alleged that her husband forced her to sign documents relating to FDRs with a view to take the amount of FD without her consent.

4. In view of the above allegations leveled by Ms.Jaya Jain, the claimant was charge sheeted by the management on 20.08.2004 to which the claimant pleaded not guilty and filed reply to the charge sheet. Management conducted a domestic enquiry against the claimant herein, wherein due opportunity was not afforded to the claimant and finally manor penalty of 'compulsory retirement from service' was awarded to the claimant. An appeal was also preferred by the claimant herein, which was also dismissed by the Appellate Authority. Thereafter the claimant raised the dispute before the Conciliation Officer resulting in making of the present reference under Section 10 of the Act.

5. Case of the claimant was contested by the management who filed written statement thereto and took preliminary objections inter alia of suppression of material facts, reference having been made in a routine manner etc. In para 2 of the preliminary objections, it is specifically alleged that the claimant was served with charge sheet for the misconduct which he had committed. He was instrumental in closing the account which was opened in the joint name of Ms.Jaya Jain and Shri Rakesh Kumar Jain, brother of the claimant. The disciplinary authority had given proper opportunity to the claimant to file reply and adduce evidence and punishment awarded to the claimant is alleged to be in accordance with law. Management, on merits, admitted that the claimant was working as clerk at the relevant time. Management has denied the other averments contained in the remaining paras wherein claimant has alleged that enquiry has been conducted against principles of natural justice etc. and denied his participation or any role in the closure of the accounts of Ms.Jaya Jain, the brother of the claimant.

6. Claimant also filed rejoinder to the written statement filed by the management and reiterated the stand taken earlier in the statement of claim.

7. Against this factual backdrop, my learned predecessor, on the pleadings of the parties, framed the following issues vide order dated 03.09.2009:

- (i) Whether the departmental enquiry conducted in this case is legal, just and fair and is not violation of the principles of natural justice? If not, what directions are called for in this case?
- (ii) As per the relief, sent by the Government of India in this case?

8. Issue No.(i) which pertained to domestic enquiry against the claimant was treated as preliminary issue and both parties were accorded opportunity to adduce evidence on this issue. It is explicit from the record of the case that both parties had examined material witnesses so as to prove the stand taken in their respective pleadings.

9. It is not out of place to mention that vide order No.Z-22019/6/2007-IRC-II dated 30.03.2010, the case was transferred to this Tribunal by the appropriate Government for adjudication, in accordance with law.

10. My learned predecessor, while rendering findings on issue No.(i), vide order dated 10.02.2012, held that the domestic enquiry conducted by the management unfair and against principles of natural justice. As such, issue No.(i) was decided against the management and in favour of the claimant.

11. Since management had pleaded that opportunity be afforded to them to prove the charges of misconduct against the claimant on merits. As such, opportunity was given to both the parties to adduce evidence on merits qua charge No.(i). Management in support of its case examined Shri S.L. Prasad as MW2, Ms.Jaya Jain as MW3, Shri Bachan Lal as MW4, whose affidavits are Ex.MW2/A, Ex.MW3/A, Ex.MW4/A respectively. Shri Bachan Lal also relied on documents Ex.MW4/1 and Ex.MW4/2. Shri Mohinder Singh, Director, Truth Labs as MW5 was examined on oath. Claimant examined himself as WW1 and his affidavit is Ex.WW1/B. The claimant was subjected to lengthy cross examination. The claimant also examined Shri Ashok Kumar Chhabra as WW2, Shri Rakesh Jain as WW3 and Shri B.N.Srivastava, Handwriting Expert as WW4. WW4 Shri Srivastava also relied on documents Ex.WW4/1 to Ex.WW4/11.

12. I have heard Shri Om Prakash Sharma, A/R for the claimant and Shri Rajesh Mahindru, A/R for the management.

13. Before I proceed to consider the comparative merits of submissions raised on behalf of either of the parties, it is necessary to reproduce allegations contained in charge sheet Ex.WW1/1, which is as under:

'That you have been working as clerk at our Vikaspuri branch, New Delhi since 22.02.1999 and while working in your position as such, the following circumstances appear against you:

That an SB Account No.3411 jointly in the name of Smt. Jaya Jain W/o Shri Rakesh Kumar Jain and Shri Shri Rakesh Kumar Jain, R/o 11/368, Sunder Vihar, Outer Ring Road, Paschim Vihar, New Delhi was opened with our Vikaspuri branch on 11.12.2000. Later on a Fixed Deposit Receipt bearing No.786813/314/99 dated 22.02.1999 for Rs.48262.00 issued by Punjab National Bank, Pitampura, Delhi in the name of Smt. Jaya Jain was collected through the said SB account. It is reported that you filled up/assisted in filling certain forms in connection with operation of the said SB account and collection of the said FD. You also received payment of

certain cheques drawn on the said SB account on behalf of your brother Shri Rakesh Kumar Jain. It is on record that the said SB account was closed immediately after withdrawing the money from the said account.

Later on, Smt. Jaya Jain lodged a complaint with the bank stating that she never opened any account singly or jointly with Syndicate Bank, Vikaspuri branch, New Delhi and that the Fixed Deposit Receipt issued by Punjab National Bank, in her name was fraudulently collected through the said SB account with Vikaspuri branch, New Delhi.

The account has other credits all in the name of Smt. Jaya Jain between 12.12.2000 to 03.04.2001 and were withdrawn by Shri Rakesh Jain incash on 23.03.2001 and 09.04.2001. A sum of Rs.20,000.00 was invested in SSD for 39 months in the branch of which the interest was to be credited to this account every month. The application for SSDN is written by you and the nomination is made in the name of minor daughter of Shri Rakesh Jain for which you have been cited as minor by guardian in your handwriting. The SB account however, was abruptly closed within four months giving an indicate, now, that the same was opened only to credit some of the instruments standing in the name of Smt. Jaya Jain and after encashing all the instruments through 'yourself' the account was closed without leaving a trace of account opening form in the branch.

It is revealed that you were fully aware about the family dispute between Smt. Jaya Jain W/o Shri Rakesh Kumar Jain and Shri Rakesh Kumar Jain your brother and in spite of that, you involved/indulged yourself in such controversial transactions providing scope for lodging the complaint by Smt. Jaya Jain, thereby, dragging the bank into avoidable controversies/litigation.

It is alleged against you that you knowing fully well about family dispute between Smt. Jaya Jain W/o Shri Rakesh Kumar Jain and Shri Rakesh Kumar Jain your brother and in spite of that, you involved/indulged yourself in the matter of opening of said SB account and subsequent operations therein including collection of Fixed Deposit Receipts etc. and exhibited negligence in discharging your duties and failed to protect the interest of the bank, thereby dragged the bank into avoidable controversies/litigations and spoilt the fair image of the Bank.

The above acts on your part are highly objectionable and detrimental to the interest of the bank and amount to misconduct within the meaning of Bipartite Settlement. You are, therefore, charged with gross misconduct of 'Doing acts prejudicial to the interest of the Bank' vide Clause 9(j) of the said Bipartite Settlement (Memorandum of Settlement) dated 10.04.2002.'

14. It is clear from the charge sheet that the main allegations against the claimant is regarding opening of SB Account No.3411 jointly in the name of Ms.Jaya Jain and Shri Rakesh Kumar Jain at Vikaspuri branch of Syndicate Bank on 11.12.2000. Other allegations against the claimant is that an amount of Rs.48,262.00 in respect of the above FDR bearing No.786813/301/99 dated 22.02.1999 issued by PNB in the name of Ms.Jaya Jain was collected through the above SB account in the joint name of Ms.Jaya Jain and Shri Rakesh Kumar Jain, brother of the claimant herein. Gravamen of the charge against the claimant herein is that he has filled up /assisted in filling up of certain forms in connection with operation of the said SB Account No.3411 and has virtually helped his brother in collection of the said amount. This account, in the contention of management, was abruptly closed within four months of its opening and this was maliciously done so as to release the amounts in the names Ms.Jaya Jain, W/o Shri Rakesh Kumar Jain. The claimant was also fully aware of family dispute between Shri Rakesh Kumar Jain (his brother) and his wife, Ms.Jaya Jain and involved himself in the above withdrawals by helping his brother, Shri Rakesh Kumar Jain. All these things in the submission of the management were done with a view to deprive Ms.Jaya Jain of the amount of Rs.48,262.00. Admittedly, Ms.Jaya Jain has not withdrawn the amount by visiting the branch of the management bank.

15. In this regard, it is appropriate to refer to the evidence adduced by the management so as to prove the charges contained in the charge sheet regarding fraudulent withdrawal of amount of Rs.48,262.00 in respect of FDR No. MB/1078 as well as opening of SB Account No.3411 in the name of Ms.Jaya Jain and Shri Rakesh Kumar Jain, brother of the claimant. The statement of Shri S.L. Prasad, Chief Manager MW2 is quite relevant and he has also conducted preliminary enquiry entrusted to him against the claimant. It is clear from his affidavit Ex.MW2/A that the Account Opening Form and specimen signature card were not made available to him during the course of investigation. It has also come in evidence of the management that these material documents were not available at the relevant time and in this regard non traceability certificate is Ex.WW1/6B. To my mind production of these documents was very essential so as to unfold the entire mystery regarding opening of SB Account No.3411 which virtually resulted in fraudulent withdrawal of Rs.48,262.00 as per strand of the management. No evidence was adduced by the management so as to show as to what efforts were made by the management bank at the relevant time to trace the above documents. Moreover, it is not the case of the management that the claimant has played any role in causing disappearance of these two documents. Had some evidence been brought by the management to the effect that some act or omission is attributable to the claimant herein in causing disappearance of the above two documents, same would have been strong circumstance against the claimant.

16. Shri S.L. Prasad while appearing as MW2 has also stated that he visited Pitampura branch of Punjab National Bank so as to verify the relevant documents and record pertaining to FDR Ex.WW1/6D where amount in question was initially invested by the complainant, Ms.Jaya Jain. It is also clear from para 3 of the affidavit Ex.MW2/A that complainant Ms.Jaya Jain and Shri Rakesh Kumar Jain, joint holder of SB account No.3411 had met this witness at PNB. There is also mention of credit slip dated 11.12.2000 alongwith statement of account, cheque dated 15.04.2011 etc. Ex.WW1/6 is the application which is alleged by the management to be fabricated by the claimant and was submitted to Pitampura branch of PNB. It is clear from contents of this application that there is mention of the fact that the FDR No.314 of 1999 in account No.MB/1078 has matured and that proceeds of the same to be transferred to SB Account No.3411 being maintained with Vikaspuri branch of Syndicate Bank. This application was admittedly submitted to Pitampura branch of PNB and was also cleared by the officials of the said branch as per banking norms. Question whether signature/handwriting on the application Ex.WW1/6E is of Ms.Jaya Jain or not would have been best explained by the officials of Pitampura branch of PNB, who have dealt with the said application at the time of clearing the proceeds of the FDR for Rs.48,262.00. There is also a presumption that the said bank was satisfied with the signatures of the complainant and had there been any doubt, the officials of PNB would have made enquiries regarding doubtful/fake signatures on the application Ex.WW1/6E. Evidence of Shri S.L. Prasad, MW2 regarding this aspect is lacking, both in quality as well as content. There is nothing in his statement as to who was the particular official of Pitampura branch of PNB who has dealt with this application initially and who has finally cleared the same. If the signatures are really not of the complainant, they were also required to compare the same with the signatures available on the specimen signature slip, which was obtained at the time of opening the FD account of Ms.Jaya Jain, but nothing of this sort appears to have been done by the officials of Pitampura branch of PNB and they have also transferred proceeds of the said FDR to SB account No.3411 held jointly in the name of Ms.Jaya Jain and Shri Rakesh Kumar Jain at Vikaspuri branch of Syndicate Bank.

17. During the course of arguments, learned A/R for the management laid much emphasis on the fact that immediately after credit of Rs.48,262.00 being the proceeds of the FDR, the SB account No.3411 held in the joint name of Ms.Jaya Jain and Shri Rakesh Kumar Jain was closed. In this regard, closure certificate is Ex.WW1/. It was urged with much vehemence that since claimant was employed with Syndicate Bank at the relevant time, as such, he was instrumental in getting the amount of Rs.48,262.00 as well as for closure of SF account No.3411. To my mind, the allegations of transfer and illegalities are of grave and serious nature, court cannot draw inference on the basis of sumices and conjectures and such material facts are required to be proved by reliable and satisfactory evidence. Shri S.L. Prasad while appearing as MW2 has specifically replied to the query that there was no irregularity in closure of SB Account No.3411 with Vikaspuri branch of Syndicate Bank. Regarding non-tracing of documents as mentioned in Ex.WW1/3 as well as closure of the account No.3411, evidence of Manager of Syndicate Bank could have been profitable as he is overall Incharge of the branch and he is the best person to disclose as to where the AOFs, Specimen signature slips as well as other documents are kept after the opening formalities of a savings fund account are completed. Normally, an account is opened only after such person has been introduced to the bank. However, Shri S.L. Prasad MW2 has stated that he cannot affirm or deny whether the said account was opened without any introduction. He has further made a vital admission that some transactions in the joint SB account No.3411 were done jointly by Shri Rakesh Jain and Ms.Jaya Jain. Even if it is assumed that the claimant herein has helped his brother in opening of SB account No.3411, the same in my humble opinion cannot be taken as circumstances against the claimant so far as question of withdrawal of amount of Rs.48,242.00 in respect of the FDR at Pitampura branch of PNB is concerned. Opening of account is one transactions whereas fraudulent withdrawal of the same is completely a different and distinct transaction and the same is required to be proved by consistent and reliable evidence when there is no direct proof of complicity of claimant in withdrawal of the amount.

18. Further, the management has not conducted any enquiry regarding disappearance of AOF in respect of SB account No.3411, as is clear from the statement of Shri S.L. Prasad, MW2. It also shows that the Manager has taken such a serious thing in a very casual manner. It has also come in the evidence of MW2 that counter clerk and counter official are responsible for opening and closing of accounts. Closure of accounts is done only on submitting application for the same from the account holders. Normally, presence of both the account holders is necessary while opening and closing of joint accounts. In a given situation, if the bank is satisfied that the authority given by one of the account holder is genuine, in that eventuality, bank can close the account at the instance of one of the account holders present in the branch. Therefore, contention of the management that the claimant was instrumental in closure of joint SB account No.3411 in the name of Ms.Jaya Jain and Shri Rakesh Kumar Jain is without any merit as an account can be closed only on moving of application by the account holder(s). This circumstance could have been proved by examining the counter clerk/counter official who has dealt with the said closure application. To my mind, non-examination of such bank official has also dealt a crippling blow to the case of the management.

19. At this stage it is also necessary to scan the statement of Shri Ashok Chhabra, WW2, who has stated in Para 3 that Shri M.P. Gupta, Manager of the bank had instructed him to bring the Saving Bank account opening form binder Ex.WW1/6P. The claimant has also in his pleadings stated that Manager of the branch was nursing a grudge against

the claimant and was not granting leaves to him. This also shows that relations between the claimant and Manager of the branch Shri M.P. Gupta were strained. Even if the statement of Shri Ashok Chhabra WW2 regarding calling of AOF binder is eschewed from consideration, even then, onus would be upon the management to prove the circumstances under which the AOF as well as specimen signature slip taken at the time of opening of SB Account No.3411 had disappeared.

20. This Tribunal also cannot ignore the fact that Ms.Jaya Jain has mentioned in her complaint to Crime Against Women Cell that her husband had forced her to sign blank cheques and documents relating to FDRs in her name. Strangely, there is no immediate complaint filed by the complainant Ms.Jaya Jain to any official of the bank or to the police regarding forcibly obtaining her signatures on any form/document. This conduct of Ms.Jaya Jain does not inspire confidence, especially when she happens to be a well educated lady. Statement of Ms.Jaya Jain that she received a telephonic call from Pitampura branch of PNB asking her to get her FDR renewed also does not inspire any confidence inasmuch as she has deposed that on her visit to Pitampura branch of PNB, she was informed by the officials of branch that her FDR has already been encashed in 2001. When the FDR was already encashed in 2001, where was the question of the branch officials of Pitampura branch of PNB calling her up for renewal of the FDR. Normally, banks never inform account holders/depositors of an account regarding maturity of FDR or withdrawal of its proceeds. Moreover, complainant Ms.Jaya Jain was not familiar or having any acquaintance with the Manager/Cashier of bank so as to inform her. Further, in her complaint with Crime against Women Cell she has clearly stated that her husband forced her to sign blank cheques and documents, as stated above, with a view to withdraw the money from her accounts. The above two stands taken by Ms.Jaya Jain are contrary to each other.

21. No doubt there is evidence on record to show that Ms.Jaya Jain, w/o Shri Rakesh Kumar Jain the brother of the claimant herein had left her matrimonial home on 24.12.2000, which fact is also mentioned in complaint Ex.MW1/W1 to CAW Cell as well as in the divorce petition Ex.MW3/W1. Stand of the claimant that he was having strained relations with his brother is also not supported by evidence on record inasmuch as there is evidence that even the children of the claimant were visiting the house where Shri Rakesh Kumar Jain brother of the claimant was residing. However, it has also come in evidence that his brother was living in a different storey and his parents were living on the ground floor. It was also urged with much vehemence that the claimant was designated as nominee in the FDR SSD for Rs.20000.00 which was opened in the name of Baby Muskan, daughter of the brother of the claimant herein, who was also mentioned as her guardian. No doubt, in normal circumstances either of the parents is mentioned as nominee in respect of the amounts which are deposited in respect of minor children. However, legally there is no bar to designate any other relation in the family as nominee of the amount deposited with the bank. Role of a nominee would only come in the event of death of the depositor and nominee is legally only trustee of the said amount. All these circumstances would have been helpful to the case of the management if there would have been clear evidence on record to suggest that the claimant has played a role in the opening of joint SB account No.3411 with Vikaspuri branch of the management. Evidence on record is rather suggestive of the fact that some transactions were done jointly by Shri Rakesh Jain and Ms.Jaya Jain, his wife. Moreover, MW2 has clearly deposed that there was no irregularity in closure of the SB Account No.3411 which was closed after about four months of its opening, i.e. the account was opened on 11.12.2000 and it was closed in 2001. This Tribunal cannot ignore the fact that relations between Shri Rakesh Kumar Jain and Ms.Jaya Jain were strained. It has come in evidence that she often visited the house of her in-laws even thereafter. Contention of the management that claimant has directly helped his brother in withdrawal of the amount of proceeds of FDR received from Pitampura branch of PNB is not supported by direct and circumstantial evidence on record, as discussed above. There are definitely suspicious circumstances in the present case which show that the claimant secretly or otherwise may have helped his brother in opening of the joint SB account No.3411 but there is no evidence of illegality/irregularity committed by the claimant in opening of the said account. MW2 Shri SL Prasad has clearly deposed that there was no illegality in closure of the account. If it is so, claimant cannot be held guilty of misconduct in any manner. Evidence of the handwriting expert could have been of value had there been other circumstances on record to suggest that it was the claimant who was instrumental in opening of the joint SB account No.3411 or the original account opening form and specimen signature slip were in fact filled in by the claimant. All things would have been appreciated had these documents be brought on record by the management so as to throw some light on the dubious role played by the claimant opening of joint account and withdrawal of amount of FDR.

22. As a sequel to my discussions made hereinabove, it is held that the claimant herein is not guilty of the misconduct as the charges mentioned in the charge sheet have not been proved. As such, the punishment of 'compulsory retirement from the service of the bank' imposed vide order dated 03.12.2005 is hereby set aside. As a necessary corollary, it is held that since Shri V.K. Jain, the claimant herein, was a regular employee of the management as such, he is ordered to be reinstated in service with full back wages with all consequential benefits. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : July 24, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 9 अगस्त, 2017

का.आ. 1886.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मै. रामा कृष्णा शिप रिपेयरिंग प्रा. लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ सं. 33/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.08.2017 को प्राप्त हुआ था।

[सं. एल-31012/3/2011-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 9th August, 2017

S.O. 1886.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 33/2012) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure, in the Industrial Dispute between the management of M/s. Rama Krishna Ship Repairing Pvt. Ltd. and their workmen, received by the Central Government on 09.08.2017.

[No. L-31012/3/2011-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M.V. DESHPANDE, Presiding Officer

REFERENCE NO.CGIT-2/33 of 2012

EMPLOYERS IN RELATION TO THE MANAGEMENT OF
M/S. RAMA KRISHNA SHIP REPAIRING PVT. LTD.

The Director
M/s. Rama Krishna Ship Repairing Pvt. Ltd.
11/13, Botawala Building, 2nd floor
Horniman Circle, Fort
Mumbai 400 023.

AND

THEIR WORKMEN

Shri Shripat Manik Bhandare
Sidharth Colony
Aliyavar Jang Marg
Khar (E)
Mumbai-400 051.

APPEARANCES:

FOR THE EMPLOYER : Mr. Satyaraj Alva, Advocate
FOR THE UNION : In person

Mumbai, dated the 19th June, 2017

AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-31012/3/2011-IR (B-II), dated 21.06.2012 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the action of the management of M/s. Rama Krishna Ship Repairing Pvt. Ltd., Mumbai in terminating the services of Shri Shripat M. Bhandare, Ex-fitter w.e.f. 26.08.2010 is legal, just and proper? What relief the workman is entitled to ?”

2. After receipt of the Reference, notices were issued to both the parties. Second party Workman filed his Statement of Claim vide Ex-3. First party resisted the Statement of claim of workman by filing their Written Statement (Ex-5). Issues were framed by my Ld. Predecessor at Ex-6. Thereafter matter was fixed for filing documents.

3. Today Second party/ workman and First party/ management filed joint purshis (Ex-14) stating that the matter has been amicably settled and may be disposed of as settled. Orders were passed on Ex-14. Accordingly I pass the following order:

ORDER

Reference is disposed of as settled.

Date: 19.06.2017

M. V. DESHPANDE, Presiding Officer/Judge

नई दिल्ली, 9 अगस्त, 2017

का.आ. 1887.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ सं. 24/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.08.2017 को प्राप्त हुआ था।

[सं. एल-12011/04/2013-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 9th August, 2017

S.O. 1887.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 24/2013) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure, in the Industrial Dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 09.08.2017.

[No. L-12011/04/2013-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M.V. DESHPANDE, Presiding Officer

REFERENCE NO.CGIT-2/24 of 2013

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

PUNJAB NATIONAL BANK

General Manager,
M/s. Punjab National Bank, PNB House,
Sir P.M. Road, Fort,
Mumbai – 400 001

AND

THEIR WORKMEN.

The General Secretary,
Punjab National Bank Employees Union,
PNB House, Sir P.M. Road, Fort,
Mumbai – 400 001

APPEARANCES :

FOR THE EMPLOYER : Ms. Mummun Mohanty, Representative

FOR THE WORKMEN : Ms. Kunda Samant, Advocate

Mumbai, dated the 5th June, 2017

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-12011/04/2013 – IR (B-II) dated 18.04.2013. The terms of reference given in the schedule are as follows :

“Whether the case of Smt. Chitra Salve is fit for regularization in the services of Punjab National Bank on the post of part-time Sweeper ? If so, from which date ?“

2. After the receipt of the reference, both the parties were served with the notices. They appeared through their respective representatives. Second party union filed statement of claim Ex.6. According to the second party union, the concerned workman Smt. Chitra Salve worked on adhoc basis as part time Sweeper on extension counter, Cheetah Camp of the first party as well as at Branch office at Anushakti Nagar on the advice of Branch Managers of both the branches during the period from 2004 to June 2008 for the total period of 633 days. Her date of birth is 13.2.1972. She has passed Std. VIII in Marathi Medium at the time of appointment. She belongs to SC category. She was 32 years old at the time of appointment. The number of days of working is recorded in the circular issued to the branches of Mumbai Circle by HRD Section wherein her name appeared as second in the list. She has enrolled herself in local Employment Exchange, Mumbai. She was issued permit by Lieutenant Commander at Cheetah Camp to enter the premises of Cheetah campus at the request of bank being prohibited area. Her working hours were 8.30 a.m. to 3.30 p.m. on all working days except Wednesday being half day. She had worked to maintain cleanliness, cleaning, sweeping of branch offices, toilets, bath rooms, wash rooms and also did the work of cleaning the entire branch premises as per the advises of Branch Managers and supervisors. She received the remuneration of sweeping and cleaning work on daily wages on adhoc basis on vouchers. She also did the additional job of peon, sub staff i.e. stamping of cheque books, Xeroxing of bank documents, attending post office for affixing stamps on envelopes for all sorts of posting and attended customers residence on the advice of Branch Managers.

3. According to the union, the concerned workman was engaged to work by putting up request letter by the Manager to the Circle Office expressing their need to the above said work on urgent basis as they could not find any substitute to the said work after transfer of Mr. Dhiraj Purohit, PTS from Ext. counter, branch office, Anushakti Nagar. She was appointed as PTS and worked for 633 days. She was entitled to full scale of wage of minimum grade of the subordinate staff, peon etc. no weekly day of rest or otherwise type of leave was granted to her. She was appointed in permanent vacancy as a temporary worker.

4. According to the union, the concerned workman wrote a letter to Dy. Genera Manager, Circle Head, Circle Office, Mumbai of the first party dated 2.7.2008 for absorption of workman as PTS on scale basis. However, her request was turned down from July 2008. She therefore reminded by letter dated 24.11.2008 and also wrote the letter to the first party for absorption in bank service as PTS on 27.11.2008.

5. It is also a case of the union that the first party had identified the vacancies of the PTS on scale basis for filling up the vacancies because of shortage of PTS and offer the post of PTS who had put in less number of days as sweeper in the first party than the concerned workman and were absorbed as PTS. Her name appeared in the roaster of PTS prepared by the first party and therefore she reminded the first party by her letters dated 14.2.2009, 30.8.2010, 21.4.2011. But bank's stand was that the concerned workman Smt. Chitra Salve had studied upto standard VIII whereas the then norms require education not beyond 4th standard at the time of appointment.

6. According to the union the first party took a Board's decision on 28.3.2011 and changed the criteria of recruitment (absorption of existing PTS) as sweeper in subordinate cadre of the bank whereby the education qualification was changed from “not studied beyond 4th standard/class” to “maximum not passed 10th standard/class”. As per these guidelines the concerned workman Smt. Chitra Salve fulfilled the criterias. However, the first party has not regularized her in service as PTS. The matter was seized in conciliatory proceedings before ALC (C), Mumbai and ended in failure. ALC (C) send the failure report on 3.12.2012 to the Central Government and that is how the matter is referred to this tribunal for adjudication. The union is therefore asking to declare that the action of the first party in not regularizing Smt. Chitra Salve in the service as PTS is neither justified nor legal and the action of the bank depriving her of regularization of her service is unfit for regularization may be set aside. She is also asking for the declaration that she be declared fit for regularization from the date her juniors regularized in service and to order to regularize her services as PTS from the date of her juniors were regularized as PTS.

7. First party bank has resisted the claim by filing written statement Ex.9. It is their contention that Smt. Chitra Salve was never appointed by the bank through regular process of employment. There was no employer-employee relationship between the bank and Smt. Chitra Salve as such she cannot be treated as workman as defined under section 2A of I.D. Act, 1947 and the dispute raised by her cannot be treated as industrial dispute under section 2K of I.D. Act, 1947.

8. It is case of the management that the engagement of Smt. Chitra Salve was purely on casual / adhoc basis for which she was duly compensated. The same would not confer upon her any right for absorption in the bank therefore her engagement was later on discontinued on account of filling up vacancy of PTS at the branch. While filling up the permanent vacancy of sweeper preference can be given to those persons who have worked on adhoc / temporary basis provided they fulfill the eligibility criteria prescribed by the bank. Since Smt. Chitra Salve had studied beyond 4th standard, she did not meet eligibility criteria laid down by the bank for appointment of the sweeper. As such representation of Smt. Chitra Salve to engage her on permanent basis on the basis of her temporary engagement was not found acceptable.

9. According to the first party Board of the bank in his meeting held on 28.3.2011 has approved as to the eligibility criteria for the recruitment of PTS in subordinate cadre of the bank to the effect that the eligibility criteria of the education qualification required for the recruitment of part time employees as sweepers in the subordinate cadre of the bank be changed from “not studied beyond 4th standard/class” to “maximum not passed 10th standard/class”. All other criteria remains same. However the extent criteria as to age and physical fitness to be kept for consideration is that the age shall be above 18 years and below 24 years as on 1st January of the said year if the person is being engaged within the 30th June and on 1st July, if the person is being engaged in 2nd half of the calendar year. There is relaxation of age limit to SC/ST candidates by 5 years, SC/ST physically handicapped candidates by 15 years, OBC candidates by 3 years, OBC handicapped candidates by 13 years, physically handicapped candidates by 10 years. Ex-servicemen candidates by 3 years in addition to length at Military service and children and family members of those who died in 1984 riots by 3 years. Maximum age limit of all relaxation combined should not exceed 45 years unless it is so provided by the government directives.

10. As per the said circular candidates are required to submit the medical certificate of fitness issued by the Medical Officer not below the rank of Civil Surgeon of an authorized government hospital in the format prescribed by the bank from time to time. Those who are physically challenged besides producing medical fitness certificates shall also furnish the medical certificate of authorized government hospital clearly indicating the nature and extent of disability.

11. According to the union as far the school leaving certificate, Smt. Chitra Salve has studied upto VIII standard and her date of birth is 13.2.1972. Although she meets the banks revised eligibility criteria of the educational qualification she is still ineligible to be considered for appointment in the bank as she does not fulfill the age criteria. As such her representation to engage her on permanent basis on the basis of her temporary engagement is not found acceptable. Since she did not made eligibility criteria laid down by the bank the question of her regularization in the bank does not arise. The first party bank has thus sought the rejection of the reference.

12. Following issues are framed at Ex.11. I reproduce the issues along with my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1	Whether the services of Smt. Chitra Salve can be regularized on the post of Part-time Sweeper ?	No
2.	Whether relief the workman is entitled to ?	As per final order
3.	What Order ?	As per final order

REASONS

Issue No. 1

13. So far contention go it is admitted position that concerned workman Smt. Chitra Salve was engaged on adhoc basis work as PTS at the extension counter, Cheetah Camp of the first party as well as at Branch office at Anushakti Nagar on the advice of Branch Managers of both the branches during the period from 2004 to June 2008 for the total period of 633 days. Her date of birth is 13.2.1972. She has passed Std. VIII in Marathi Medium at the time of said adhoc appointment. It is also admitted that she belongs to SC category. The question is whether she has fulfilled the eligibility criteria laid down by the bank at the time when her application for appointment in the bank was under consideration.

14. We have document i.e. the circular No. 772 dated 17.5.1984 in respect of fixation of wages of part time employees in the subordinate cadre and related matters. By way of this circular it is made clear that the vacancies as PTS eligible for half, $\frac{3}{4}$ and full wages shall be fulfilled on the basis of seniority determined by converting the service put in at 1/3rd, $\frac{1}{2}$ and $\frac{3}{4}$ of the scale wages into full time service and the recruitment of the part time and full time sweepers shall be as per the eligibility criteria laid down by the bank from time to time. It is also made clear that as per the letter dated 9.6.2008 i.e. letter from HRD Section to all offices regarding temporary sweepers, the eligibility criteria

in respect of age was that the age between 18 – 45 years and not more than 4th standard passed. The update list of temporary list of sweepers was prepared with all the informations as regards the names, educational qualifications, number of days worked etc. and in that letter the name of Smt. Chitra Salve is at Sr. No.2 whose birth date is mentioned as 13.2.1972 and education qualification is mentioned as VIIth standard. So far these aspects are concerned it seems to have been admitted position that at the time of engagement of the concerned workman as an adhoc PTS, her birth date was 13.2.1972 and she was passed VIIth standard in Marathi medium. That time considering her age, education qualifications and working days she appears to have sent request letter to the Dy. General Manager, Circle Head, Circle Office, Mumbai for her absorption as a workman as part time sweeper but then her request was turned done.

15. It appears that her request was turned down on the ground that the appointment of the sweepers at that time as per the guidelines of the bank was confined to those who have not studied beyond 4th standard and Smt. Chitra Salve was studied upto VIIth standard at that time. This eligibility criteria was to be followed by the first party bank and it can be said therefore that at the time when she made request for absorption in the service as PTS in the bank on 2.7.2008 and thereafter on 14.11.2008 she was not considered because she was not fulfilling the eligibility criteria as per the circular of the bank.

16. The Learned Counsel for the concerned workman submitted that the concerned workman had not suppressed her date of birth or the educational qualification at the time of her employment. Rather it was within the bank's knowledge that she was over qualified being VIIth standard passed and she was below 45 years of the age at the time of her initial appointment. In view of this, the submission is that she has completed 633 days of service and therefore the management was estopped from saying that her services could not be regularized because she has not fulfilled the age criteria as per the circular vide PAD circular letter No. 4/2011 dated 2.4.2011.

17. The Learned Counsel for the union seeks to rely on the decision in case of H.D. Singh V/S. Reserve Bank of India 1985 (0) AIJEL – SC 10320 to submit that issuing of such circular by the management amounts to unfair labour and therefore striking of the name of the workman from rolls amounts to retrenchment under section 2 (oo) of I.D. Act.

18. He also seeks to rely on the decision in case of Punjab Land Development & Reclamation Corporation Ltd., Chandigarh & Ors. V/S. Presiding Officer, Labour Court, Chandigarh & Ors. 1990 CLR (Vol. II) to submit that retrenchment means termination by the employer of the service of a workman for any reason whatsoever except those expressly included in section 2 (oo) of I.D. Act.

19. So far facts of the present case are concerned, it cannot be disputed that the eligibility criteria laid down by the bank in terms of bank's guidelines shall be followed in case of recruitment of PTS/FTS. Initially, engagement of Smt. Chitra Salve was on ad hoc basis as PTS. It is no doubt true that while filling the permanent vacancy preference has to be given to those personnel who have worked on ad hoc basis provided they fulfill the eligibility criteria prescribed by the bank and this was informed to the concerned workman by way of her reply to the representation that since she did not fulfill the eligibility criteria laid down by the bank for appointment as sweeper, her representation was not found acceptable. Even in her cross-examination the concerned workman has admitted that she was knowing the age-limit and educational qualification required for the post of sweeper in the bank. Admittedly at the time when she raised the dispute, her age was 37 years that would show that she was not fulfilling the age criteria as per circular dated 2.4.2011. Obviously therefore when she was not appointed as PTS in place of permanent vacancy and when she was not fulfilling the criteria for engagement as PTS, her services came to be dis-continued. Discontinuance of her services was not on the ground that even after fulfilling the criteria for appointment as PTS, she was dis-continued. There is no evidence therefore to show that she was discriminated and the other ad hoc employees who were engaged / regularized were also not fulfilling the eligibility criteria. The fact remains that all the while she was informed about the reason as to why she could not be considered for regularization and that due to non-fulfilling of age criteria, her temporary service can not be taken into consideration. In view of this I find that the observations in the cited dictum are of no help to her.

20. As a matter of fact, it is admitted position that the board's decision dated 28.3.2011 changed the criteria of recruitment as sweeper in subordinate cadre of the bank, whereby the education qualification was changed from "not studied beyond 4th standard/class" to "maximum not passed 10th standard/class" and due to change in the criteria for recruitment the representation of the concerned workman was not acceptable. As per the said circular the eligibility criteria of the educational qualifications required for recruitment of part time employees as sweepers in subordinate cadre of the bank was changed and criteria as to the age was that the employee should be above 18 years and below 24 years as on 1.1.2011. Relaxation of age-limit was there for SC/ST candidates by 5 years. The concerned employee was SC/ST candidate and therefore there was relaxation of 5 years and therefore her age at the time when she was to be considered as per the circular should be below 29 years. It is admitted by the concerned workman that at the time of the said dispute her age was 37 years. It was informed to her that although she meets the bank's revised eligibility criteria of educational qualification but she is still ineligible to be considered for appointment in the bank as she does not fulfill the age criteria as is mentioned above.

21. Considering all these facts I find that the concerned workman was not considered for regularization since she did not fulfill the required criteria. It cannot be said therefore that the action of the bank depriving her of regularization of her services was unfair. Admittedly the eligibility criteria was fixed for the appointment of the permanent PTS even of the employees who were working as PTS on adhoc basis, that eligibility criteria was to be fulfilled by each of the employee. if it is not fulfilled then he was not to be considered for regularization. Since concerned workman was not fulfilling the criteria as laid down by the bank as per the circular, she was not considered for regularization and therefore her services cannot be regularized on the post of PTS. For these reasons I answer Issue No. 1 accordingly in the negative.

Issue Nos. 2 & 3

22. In view of my findings to Issue No.1 I find that the workman is not entitled to any relief. Hence I pass the following order.

ORDER

Reference is rejected with no order as to costs.

Dated : 05.06.2017

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 9 अगस्त, 2017

का.आ. 1888.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ महाराष्ट्र के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/त्रिम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ सं. 34/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.08.2017 को प्राप्त हुआ था।

[सं. एल-12011/1/2011-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 9th August, 2017

S.O. 1888.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 34/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure in the Industrial Dispute between the management of Bank of Maharashtra and their workmen, received by the Central Government on 09.08.2017.

[No. L-12011/1/2011-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : M.V. DESHPANDE, Presiding Officer

REFERENCE NO.CGIT-2/34 of 2011

EMPLOYERS IN RELATION TO THE MANAGEMENT OF
BANK OF MAHARASHTRA

The General Manager [HRM]
Bank of Maharashtra, Lokmangal,
1501, Shivaji Nagar,
Pune – 411 005

AND

THEIR WORKMEN

The General Secretary,
Bank of Maharashtra Karmachari Sena,
25, Unique House, 1st Floor, Brelvi Marg,
Mumbai - 23

APPEARANCES :

FOR THE EMPLOYER : Mr. M.B. Anchan, Advocate.
 FOR THE WORKMAN : Mr. J.H. Sawant, Advocate.

Mumbai, dated the 7th June, 2017

AWARD

1. The Government of India, Ministry of Labour & Employment by its Order No.L-12011/1/2011-IR (B-II) dated 13.06.2011 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the action of the management of Bank of Maharashtra in not considering the candidature of Shri V.P. Rane, Special Assistant, for the post of Officer Cadre (JMGS-I) is legal, just and proper ? What relief the workman concerned is entitled to ?”

2. After receipt of the reference, notices were issued to both the parties. In response to the notice, the second party workman filed her statement of claim at Ex-11.

3. It appears that second party workman was working as Special Assistant and he as per the circular dated 27.7.2009 has submitted an application dated 6.8.2009 in the promotion process applied for the promotional post of Officer cadre. The first party bank by letter dated 28.8.2009 informed the concerned workman that he was not eligible to participate in the promotion process.

4. According to the concerned workman, no reason was assigned by the first party management in his letter dated 28.8.2009 as to why he was not eligible to participate in the promotion process. The first party management by letter dated 6.2.2010 informed the second party workman that as per the Special Assessment Report dated 8.8.2009 the second party workman was rated below ‘good’ and therefore the second party workman was not eligible to participate in the promotion process.

5. According to the second party workman he was never informed at any time earlier that his rating was below ‘good’. The copy of Special Assessment Report dated 8.8.2009 has been never given to him. There was having no communication of whatsoever nature to the second party workman in respect of his rating below ‘good’ or any adverse remark in his service record. Infact, Shri Vivek Sabnis Dy. Manager/Officer-in-charge who was the Assessing Officer in his report in response to the circular dated 22.7.2009 has rated the second party workman as ‘good’ and therefore he was eligible for participation in the process of promotion as a pre-condition as per the Memorandum of Settlement dated 2.7.2009 / circular dated 22.7.2009. He was eligible to the promotional post on and from 1.9.2009 i.e. from the date on which the promotion was given to the employees junior to him in the service.

6. According to the second party workman he was denied the opportunity to participate in the promotion process and the employees who were junior to him in the service have been given promotion to the post of Officer cadre w.e.f. 1.9.2009. As such the principles of natural justice as well as statutory service conditions have been violated by the first party management and the second party workman has been deprived of his right to participate in the promotion process and his entitlement to the promotional post of the Officer cadre w.e.f. 1.9.2009. Second party workman is therefore asking to declare that action of first party management in not considering his candidature for the post of the Officer cadre w.e.f. 1.9.2009 is illegal, unjust and improper. He is also asking for declaration to the effect that he is entitled to the relief to the extent of his promotion to the post of the Officer cadre w.e.f. 1.9.2009 with all consequential benefits.

7. First party management resisted the claim by filing the written statement (Ex.13). According to the first party management it had conducted the promotion process for the post of Special Assistant to Officer cadre in junior management grade scale-I in July 2009 as per the provisions of Memorandum of Settlement dated 2.7.2009 entered into with the Bank of Maharashtra Employees Federation, a majority of union to which bank has granted status of sole bargaining agent. As per the said Memorandum of Settlement a circular dated 22.7.2009 was issued inviting the applications from all eligible Special Assistants for 50 posts of officers in the Junior management Cadre Scale – I. All the applications received by the bank were scrutinized as per the provisions of Memorandum of Settlement dated 2.7.2009. The application of the concerned workman dated 8.8.2009 was processed by the bank as per the guidelines prescribed for the promotion process from Special Assistant grade to Officer cadre as per the Memorandum of Settlement.

8. According to the first party management, one of the pre-condition for the said special promotion process is that a special confidential report on performance etc. shall be obtained from the Branch Manager/Officer-in-charge under whom the Special Assistant has worked for atleast six months and the Special Assistant whose rating is below ‘good’ shall not be eligible for the promotion process. The pre-condition is that the confidential report shall be obtained only for the purpose of qualifying for the process and no marks shall be assigned while preparing select list. In view of that

special assessment report in the prescribed format was submitted by the authority under whom the concerned workman was working. On perusal of the special assessment report dated 8.8.2008 duly signed by the official of the Currency Chest, Thakurdwar, which was enclosed to the application of the workman, was observed and in the said report he was rated either unsatisfactory or fair in 7 out of 8 parameters i.e. parameter Nos. 3, 5, 6 and 7. As per the provisions of Memorandum of Settlement dated 2.7.2009, concerned workman Shri Rane was rated below 'good' and therefore he was not considered eligible for the said promotion process. Accordingly, the bank informed the concerned workman vide letter dated 28.8.2009 about his ineligibility for the said promotion process.

9. According to the first party management, revised confidential report in respect of concerned workman was received by the bank on 16.9.2009 on the basis of which the concerned workman had insisted for inclusion of his name in the list of eligible candidates. His request was not accepted since there is no provision in the Memorandum of Settlement for inviting or accepting revised assessment report. So the bank had already finalized the list of eligible candidates and interview process was commenced from 7.9.2009. The representation of the concerned workman was not as per the provision of Memorandum of Settlement and therefore it was not considered. The bank had already completed the said promotion process and the selected candidates have resumed to their duties at new place of posting.

10. It is thus case of the bank management that the bank had strictly followed the guidelines of Memorandum of Settlement dated 2.7.2009 and there is no merit in the issue raised by the concerned workman. The concerned workman has been promoted to the Officer cadre on 18.12.2010. His demand has been satisfied. He is working as an officer at bank's Nagdevi Street Branch, Mumbai w.e.f. 14.2.2011 as such action of the management is legal and proper. The management has thus sought the rejection of the reference.

11. Following issues are framed at Ex.14. I reproduce the issues along with my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1.	Whether the action of the management not considering the candidature of Shri V.P. Rane, Special Assistant for the post of Officer Cadre (JMGSS-I) in 2009 is legal and justified ?	No
2.	What relief the workman is entitled to ?	As per final order
3.	What order ?	As per final order

REASONS

Issue No. 1:

12. It seems to have been admitted position that the concerned workman who was working as Special Assistant has applied for participation in the promotion process for the promotional post of Office Cadre vide his letter dated 6.8.2009 and the first party management by its letter dated 28.8.2009 informed the second party workman that he is not eligible to participate in the promotional process because as per special assessment report dated 8.8.2008 he was rated below 'good'. The question is whether the rating or performance of concerned workman is communicated to him or not ?

13. According to the concerned workman in the letter dated 28.8.2009 the first party management has not assigned any reason as to why he was not eligible to participate in the promotion process. It is only thereafter by its letter dated 6.2.2010 the concerned workman was informed that as per special assessment report dated 8.8.2008 he was rated below 'good' and therefore he was not eligible to participate in the promotion process. It appears therefore that the second party workman was not informed earlier before 6.2.2010 with his rating as below 'good' and therefore he was not eligible to participate in the promotional process.

14. Learned Counsel for the management submitted that special confidential report on performance of the employee was to be obtained only for the purpose of qualifying for the process as per the provisions of Memorandum of Settlement dated 2.7.2009 and accordingly the special assessment report in the prescribed format in respect of the concerned workman was obtained only for the purpose of qualifying for the process of promotion and not for any other reason. He submits that as per parameters provided for submitting the confidential report in respect of the Special Assistant applying for the said promotion process the employee getting outstanding rating atleast in 4 areas which must include the areas in Sr. Nos. 3, 5, 6 and 7 and very good in respect of overall all performance. Considering these parameters the special assessment report was to be considered and in view of that the concerned workman was not considered eligible for participation in the promotional process since it was observed that in 7 out of 8 parameters i.e. parameter in Sr. Nos. 3, 5, 6 and 7 he was rated as unsatisfactory or fair.

15. Assuming for the sake of argument that as per special assessment report concerned workman was rated either satisfactory or fair and below 'good' in parameter Nos. 3, 5, 6 and 7, then it was obligatory on the part of the management to communicate the remarks given in confidential report to the concerned employee. If no such communication was there and the eligibility of the concerned workman was considered on the basis of said confidential report then it would unjust and improper to consider him ineligible for the participation in the promotional process.

16. In the context, the Learned Counsel for the concerned workman seeks to rely on the decision in cases of Dev Dutt V/S. Union of India & Ors. AIR 2008 (SC 2513) wherein the Hon'ble Supreme Court has concluded that every entry in ACR of the public servant must be communicated to him within the reasonable period whether it is poor, fair, average, good or very good. The Hon'ble Apex Court has observed in para 17 & 18 of the judgment that,

"In our opinion, every entry in the A.C.R. of a public servant must be communicated to him within a reasonable period, whether it is a poor, fair, average, good or very good entry. This is because non-communication of such an entry may adversely affect the employee in two ways : (1) Had the entry been communicated to him he would know about the assessment of his work and conduct by his superiors, which would enable him to improve his work in future (2) He would have an opportunity of making a representation against the entry if he feels it is unjustified, and pray for its upgradation. Hence non-communication of an entry is arbitrary, and it has been held by the Constitution Bench decision of this Court in Maneka Gandhi vs. Union of India (supra) that arbitrariness violates Article 14 of the Constitution.

Thus it is not only when there is a benchmark but in all cases that an entry (whether it is poor, fair, average, good or very good) must be communicated to a public servant, otherwise there is violation of the principle of fairness, which is the soul of natural justice. Even an outstanding entry should be communicated since that would boost the morale of the employee and make him work harder."

17. Learned Counsel for the concerned workman has also relied on the decision in case of Sukhdev Singh V/S. Union of India in Civil Appeal No. 5892/2006 wherein the Hon'ble Apex Court while referring to the decision in case of Dev Dutt V/S. Union of India & Ors. has concluded that every entry in ACR of public servant must be communicated to him / her within the reasonable period. The Hon'ble Apex Court thus observed that even in cases there is no bench mark laid down by the authorities for promotion, non-communication of entries in the ACR of the public servant is arbitrary because it deprive the concerned employee on making representation against it and praying for its upgradation. Every entry in the ACR of every employee under the State whether he is civil, judicial, police or other service (except Military) must be communicated to him so as to enable him to make the representation against it because non communication which deprives the employee of the opportunity of making representation against it which may affect his chance of being promoted. Hence the non-communication is arbitrary and violative of article 14 of the Constitution.

18. In view of this legal position it was necessary for the first party management to communicate the unsatisfactory or fair performance of the second party workman to him before depriving him for participation in the promotional process. As a matter of fact, it appears that first party management has informed to the concerned workman vide letter dated 28.8.2009 about his ineligibility to the said promotion process. But then it appears that revised confidential report in respect of the concerned workman which was revised by the bank itself on 16.9.2009 was not considered or accepted on the ground that there is no provisions in the Memorandum of Settlement for inviting and accepting revised assessment report. Obviously, it appears that he was denied opportunity earlier by not communicating him the reason as to why he was not considered eligible to participate in the process and that time the rating of the special assessment report was also not communicated to him which was considered as a basis for his ineligibility to participate in the promotion process. Subsequently, revised assessment report which was prepared by the bank was also not considered that would amount to denial of opportunity to him to participate in the promotional process of the year 2009.

19. Here it may be stated that the management has not adduced any evidence to justify the action of denying opportunity to the concerned workman to participate in the promotional process of the year 2009.

20. Even then the Learned Counsel for the management submitted that the workman has been promoted to the Officer Cadre on 18.12.2010 and as such his demand has been satisfied but then the fact remain that he was denied opportunity to participate in the promotional process of the year 2009 and the reason given by the management as per letter dated 6.2.2010 was not proper since his rating in the said special assessment report was not communicated to him whereby he was denied opportunity to make representation and to improve his performance. Since before denying opportunity to him to participate in the promotional process of the year 2009 his rating in the performance was not communicated to him identifying the area where the improvement is required. The legal position is that the action of the management in denying the opportunity to him to participate in the promotional process of the year 2009 is illegal. As such the action of the management in not considering the candidature of Shri Rane, Special Assistant for the post of Office Cadre in 2009 is illegal. Issue No.1 is therefore answered accordingly.

Issue No. 2 & 3 :

21. In view of my findings to Issue No.1, I find that the concerned workman is deprived from participation in the promotional process of the year 2009. Now he is given promotion on 18.12.2010. In view of that it will be open for him to make representation to the first party authorities for retrospective promotion in view of legal position cited supra. If such representation is made by the concerned workman, the same shall be considered appropriately in accordance with law. If upgradation is allowed from 2009, the first party bank should consider forthwith his promotion to the Officer Cadre from 2009 and he will get the benefit of balance of arrears of pay along with interest @ 8% per annum and other consequential benefits. Thus the order:

ORDER

- (1) It is declared that action of first party management in not considering the candidature of concerned workman Shri Rane, the then Special Assistant for the post of Officer Cadre is unjustified and improper.
- (2) It is open to the concerned workman to make the representation to the concerned authorities for retrospective promotion and if such representation is made by him the same shall be considered by the concerned authorities appropriately in accordance with law.
- (3) If the representation is allowed the concerned workman should be considered forthwith for promotion retrospectively w.e.f. 1.9.2009 and if he is promoted, he will get the balance of arrears of pay along with 8% per annum interest and other consequential benefits.

Date: 07.06.2017

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 9 अगस्त, 2017

का.आ. 1889.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बड़ौदा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ सं. 5/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.08.2017 को प्राप्त हुआ था।

[सं. एल-12011/60/2012-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 9th August, 2017

S.O. 1889.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 5/2013) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure in the Industrial Dispute between the management of Bank of Baroda and their workmen, received by the Central Government on 09.08.2017.

[No. L-12011/60/2012-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI**

PRESENT : M.V. DESHPANDE, Presiding Officer

REFERENCE NO.CGIT-2/5 of 2013

EMPLOYERS IN RELATION TO THE MANAGEMENT OF
BANK OF BARODA

The General Manager (HRM)
Bank of Baroda, Corporate Centre
Bandra Kurla Complex
Bandra (E)
Mumbai 400 051.

AND

THEIR WORKMEN

The General Secretary

Bank of Baroda Karamachari Sena
C/o. 4/39, Manaji Rajuji Building
Sitaram Jadhav Marg
Lower Parel (W)
Mumbai-400 013.

APPEARANCES :

FOR THE EMPLOYER : Ms. Deepika Agarwal, Representative

FOR THE UNION : No appearance

Mumbai, dated the 1st June, 2017.

AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-12011/60/2012-IR (B-II), dated 01.02.2013 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the Industrial Dispute raised by the Bank of Baroda Karmachari Sena, Mumbai in respect of Shri Chandrakant Z. Waghela and Shri Rajnikant Z. Waghela after approximately 10 years from the alleged date of termination is sustainable & maintainable as per Law? If so, whether the demand of Bank of Baroda Karmachari Sena seeking the reinstatement in service with permanent appointment in Bank of Baroda in respect of Shri Chandrakant Z. Waghela and Shri Rajnikant Z. Waghela is legal, proper and justified? What relief, these two workmen are entitled to and from which date ?”

2. After receipt of the Reference, notices were served on both the parties. Matter was adjourned on several occasions for filing Statement of Claim by second party/ Union. Shri C. Waghela and Shri Rajnikant Waghela concerned workmen though appeared on some dates but failed to file Statement of claim. Without Statement of claim, the Reference cannot be decided on merits and the same deserves to be dismissed. Orders were passed on Ex-1. Accordingly I pass the following order:

ORDER

Reference stands dismissed for want of prosecution.

Date: 01.06.2017

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 9 अगस्त, 2017

का.आ. 1890.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब एण्ड सिंध बैंक के प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, चंडीगढ़ के पंचाट (संदर्भ सं. 248/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.08.2017 को प्राप्त हुआ था।

[सं. एल-12012/117/2011-आईआर (वी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 9th August, 2017

S.O. 1890.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 248/2012) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure in the Industrial Dispute between the management of Punjab & Sind Bank and their workmen, received by the Central Government on 09.08.2017.

[No. L-12012/117/2011-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II,
CHANDIGARH**Present:** Sri Kewal Krishan, Presiding Officer**Case No. 248/2012**

Registered on 05.10.2012

1. Gurnam Singh S/o Sh. Manohar Singh,
Resident of Village & P.O. Ajaibwali,
Tehsil and District Amritsar.

2. Sanjeev Kumar s/o Sh. Ashok Kumar,
Resident of House No.D/2, 156-A,
Chhota Haripura, Amritsar

...Applicants

Versus

Zonal Manager, Zonal Office,
Punjab and Sind Bank, Amritsar

...Respondent

APPEARANCES :

For the workman - Sh. Arun Batra, Adv

For the Management - Sh. J.S. Sathi, Adv

AWARD

Passed on : 21.06.2017

Vide Order No.L-12012/117/2011-IR(B-II), dated 12.09.2012, the Central Government in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of Punjab & Sind Bank in not paying minimum pay scale and other allowances to Sh. Gurnam Singh and Sanjeev Kumar, Peon since last 6 to 11 years like temporary peon is legal and justified? What relief the concerned workmen are entitled to?”

In response to the notice, workmen appeared and filed statement of claim, pleading Gurnam Singh workman joined on 05.02.2001 as temporary Peon in the zonal office at Amritsar and was paid Rs.70/- per day. He was transferred to RCC Branch, Amritsar in 2007 and then to Sharifpura on 26.06.2010.

It is further pleaded that Sanjeev Kumar workman joined as Peon on 20.01.2001 in the Branch on Railway Road, Amritsar and was paid Rs.80/- per day and Rs.20/- as voucher stitches and thereafter he was being paid Rs.150/- per day and Rs.30/- on account of voucher stitching.

Both the workmen have been working as temporary Peons for the last 11 years and 6 years as temporary Peons and they are performing all the duties of a Peon, but they were not paid minimum pay scale of the post of temporary Peon and other benefits. Thus, the action of the management is illegal and they are entitled to be paid minimum pay for the post of temporary Peon and other allowances.

The respondent-management filed written statement, controverting the averments and pleaded that the services of the workmen were engaged intermittently to meet the exigencies purely on temporary basis and they are not appointed as temporary Peons by following any procedure. It is denied that they were transferred from one place to another and pleaded that there was only re-engagement of the workers. That the workers are given wages on daily wage basis and they cannot claim minimum pay scale of temporary Peons.

Parties were given opportunity to lead the evidence.

In support of his case, Sanjeev Kumar workman appeared in the witness box and filed his affidavit reiterating his case as set out in the claim petition.

On the other hand, respondent-management has examined Sh. Balkar Singh, who filed his affidavit supporting the stand taken by the management in the written statement.

I have heard Sh. Arun Batra for the workmen and Sh. J.S. Sathi for the management.

It was contended by Mr. Batra, learned counsel for the workmen that workmen have been discharging the duties as temporary Peons for the last several years but, they were not being paid the minimum pay scale and other benefits as applicable to temporary Peons and they are entitled to get the same.

I have considered the contention of the learned counsel.

It is a specific case of the workmen that they were appointed as temporary Peons. If it was so, then some procedure must have been adopted as prescribed under the rules but they did not place on record any appointment letter, appointing them as temporary Peons and there is nothing on the file that any procedure was followed while appointing them as temporary Peons as claimed by them.

Thus, it cannot be said from the mere assertions that both the workmen were appointed as temporary Peons. It is specific case of the management that they were engaged on daily wages purely on temporary basis due to exigencies and Balkar Singh, a witness of the management, has specifically stated during cross-examination that the workmen worked with the bank off and on and they were engaged on daily wage basis.

Thus, the workmen have failed to prove that they were appointed at any time as temporary Peons and as such, they cannot claim any parity that the said Peons posted in the Bank.

In result, there is no merit in the reference and the same is decided accordingly, holding that the workmen are not entitled to minimum pay scale and other allowances as are applicable to temporary Peons and the action of the management in this respect is legal and valid and the reference is answered accordingly.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 9 अगस्त, 2017

का.आ. 1891.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब एण्ड सिध बैंक के प्रबंधतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, चंडीगढ़ के पंचाट (संदर्भ सं. 234/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.08.2017 को प्राप्त हुआ था।

[सं. एल-12012/64/2011-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 9th August, 2017

S.O. 1891.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 234/2012) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure in the Industrial Dispute between the management of Punjab & Sind Bank and their workmen, received by the Central Government on 09.08.2017.

[No. L-12012/64/2011-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sri Kewal Krishan, Presiding Officer

Case No. 234/2012

Registered on 30.03.2012

Sh. Baljit Singh S/o Sh. Sher Singh,
R/o House No.2-B, Mohindera Colony,
Opposite I.B. Office, Amritsar

...Applicant

Versus

1. Zonal Manager, Punjab and Sind Bank,
Zonal Office, Amritsar.

2. Manager, Guru Nanak Dev University Branch,
Punjab and Sind Bank, Amritsar ... Respondent

APPEARANCES :

For the workman - Sh. Arun Batra, Adv
For the Management - Sh. J.S. Sathi, Adv

AWARD

Passed on : 21.06.2017

Vide Order No.L-12012/64/2011-IR(B-II), dated 05.03.2012, the Central Government in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of Punjab & Sind Bank in , Zonal Office, Amritsar/Manager, Guru Nanak Dev University Branch, Punjab & Sind Bank, Amritsar in terminating/dis-continuing the services of Sh. Baljit Singh, S/o Sh. Sher Singh, Ex-Peon w.e.f. 18.05.2010 without any notice and without any payment of retrenchment compensation is just, valid and legal? What relief the workman is entitled to?”

In response to the notice, workman appeared and submitted statement of claim, pleading that he is 10+2 pass and being eligible, was allowed to join as Peon with the respondent-management on 15.06.1998 and was paid Rs.50/- per day on weekly voucher payment. He continuously worked up to 09.04.1999 and was orally transferred to Kot Road Branch, Amritsar and was paid Rs.60/- per day. He remained in the said Branch till 09.01.2000 and was orally transferred to Branch Chawal Kalan w.e.f. 10.02.2000. He was transferred to Railway Road Branch on 01.02.2002. His services were orally terminated on 15.11.2004 without any notice and payment of compensation in violation of Section 25-F of the Act.

He made representations and he was allowed to join at Guru Nanak Dev University Branch Amritsar on 19.12.2009. His services were again terminated on 18.05.2010.

Thus, the services of the workman were terminated in violation of the provisions of law and he is to be reinstated in service.

The respondent-management filed written statement, controverting the averments and pleaded that the workman was engaged from time to time on purely temporary basis to meet the exigencies and was not holding a transferrable post. Re-engagement of the workman in another branch would amount to fresh engagement without carrying continuity of service. There is no violation of Section 25-F of the Act. That the workman was engaged in December 2009 for a short period and he did not complete 240 days of service. That there is no violation of any law and he is not to be reinstated in service.

In support of his case, Sh. Baljit Singh, workman appeared in the witness box and filed his affidavit reiterating his case as set out in the claim petition.

On the other hand, respondent-management has examined Sh. Jagmohan Singh, who filed his affidavit, supporting the stand taken by the management in the written statement.

I have heard Sh. Arun Batra for the workman and Sh. J.S. Sathi for the management.

It was argued by the learned counsel for the workman that workman continuously worked from 15.06.1998 to 15.11.2004 and was transferred from one Branch to another and he was again engaged on 19.12.2009 and his services were terminated on 18.05.2010 and the termination of the services of the workman are in violation of Section 25-F of the Act and he be reinstated in service.

I have considered the contention of the learned counsel.

It is the definite case of the workman that he was allowed to join as Peon on 15.06.1998 and was paid Rs.50/- per day on weekly voucher payment and thereafter he was transferred to different places and the bank continued to pay him Rs.60/- on weekly vouchers. That his services were terminated on 15.11.2004. Thus, as per the workman himself, there is a record with the Bank for giving payment to him from 15.06.1998 to 15.11.2004, but the workman neither summoned any such record nor produced the same to show that he continuously worked for the said period.

On the other hand, it is the definite case of the management that the workman was engaged on daily wage basis as per exigencies and his services were not of continuous and in the absence of the record available regarding payment of wages, the stand taken by the management is taken to be correct and it cannot be said that the workman worked continuously from 15.06.1998 to 15.11.2004 continuously.

It is the case of the workman himself that he was allowed to join duty on 19.12.2009 at Guru Nanak Dev University, Amritsar where he was worked upto 17.01.2010. The period he worked at the said place is less than 240 days and thus, he is not entitled to the protection of section 25-F of the Act.

Since the workman was engaged from time to time on purely temporary basis, it cannot be said that he was transferred from one Branch to another and it cannot be said that he continuously worked for the period in question and since there is no violation of any provisions of law, he is not entitled to any relief as he claimed.

In result, there is no merit in the reference and the same is decided accordingly, holding that the action of the respondent-management in dis-continuing the services of the workman w.e.f. 18.05.2010 is legal and valid and he is not entitled to any relief and the reference is answered accordingly.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 9 अगस्त, 2017

का.आ. 1892.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कामराजर पोर्ट लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ सं. 90/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.08.2017 को प्राप्त हुआ था।

[सं. जेड-16015/01/2015-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 9th August, 2017

S.O. 1892.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 90/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of Kamarajar Port Ltd. and their workmen, received by the Central Government on 09.08.2017.

[No. Z-16015/01/2015-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Tuesday, the 18th July, 2017

Present : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 90/2015

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Kamarajar Port Ltd. and Two Others and their workman]

BETWEEN :

The President : 1st Party/Petitioner
 Minijur Pothu Thozhilalar
 BTR Ninaivagam
 Athipattu Pudhu Nagar
 Chennai-600120

AND

1. The Chairman & Managing Director : 2nd Party/1st Respondent
 Kamarajar Port Ltd.
 Athipattu
 Chennai-600120

2. M/s. Radiant Engineers, Contractor : 2nd Party/2nd Respondent
 Plot No. 13, K.P. Nagar
 Ramapuram
 Chennai-600089

3. M/s. Prumatech Services Pvt. Ltd. : 2nd Party/3rd Respondent
 141, Anna Salai, Saidapet
 Chennai-600015

Appearance :

For the 1st Party/Petitioner Union : M/s Ajoy Khose, Advocates

For the 2nd Party/1st Management : Sri Krishna Ravindran, Advocate

For the 2nd Party/2nd Management : Set-Ex parte

For the 2nd Party/3rd Management : M/s M.L. Manickam & S, Jayaprakash, Advocates

AWARD

The Central Government, Ministry of Labour & Employment, vide its Order No. Z-16015/01/2015-IR (B.II) dated 08.06.2015 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

“Whether the action of the Management of Kamaraj Port Ltd. in not absorbing the services of 26 workmen (Annexure-A) in the establishment is justified? If not, to what relief are the workmen entitled to?”

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 90/2015 and issued notice to both sides. The petitioner and the Respondents 1 and 3 have entered appearance through their counsel and filed Claim and Counter Statements respectively. The Second Respondent remained ex-parte. The petitioner has filed rejoinder in answer to the Counter Statements.

3. The averments in the Claim Statement filed by the petitioner in brief are as below:

The Chennai Port Trust is one of the major ports of India. The Trust constructed an additional port at Ennore mainly for handling coal. From the year 2000 the Ennore Port became an independent establishment and was named Kamaraj Port Ltd. This is arrayed as the First Respondent. In Chennai Port operation and maintenance of entire electrical and allied works are carried out by regular employees. This is so because it involves technical knowledge and skill and involves high risk. However, Chennai Port started carrying out operation and maintenance of electrical and allied works in Ennore Port by a dubious method. They made a smokescreen arrangement of contract and workmen were employed through such arrangement. Though the so-called Contractors changed from time to time they had no license to employ contract labourers for and behalf of Chennai Port Trust at Ennore Port. Even after Ennore Port became independent it has no registration for contract labour system or to employ contract labourers for any work. The so-called Contractors including Respondents 2 and 3 have no role in the allotment of work or control or supervision over the work. The work was carried out by the workmen within the premises of Ennore Port. All the materials and equipments required for carrying out the operation and maintenance of electrical and allied works are provided by the Port Management. Electrical maintenance and operation work is work which is permanent and perennial, which is carried out round the clock throughout the year. The workmen who are carrying out the work are really workmen of the Ennore Port. Regular employees carrying out such work in Chennai Port are getting scale of pay with all other allowances and are given benefits of all labour welfare legislations also. All the workmen who are carrying out operation and maintenance of electrical and allied work at Ennore Port are skilled and educationally qualified workmen. The workmen are employed in three shifts apart from the general shift. These workmen are paid only a meager consolidated pay. They are getting far less than the minimum wages. They are not extended with the benefits such as Bonus, PF, ESI, etc. All the workmen who are doing the electrical work have joined the Petitioner Union which is a registered trade union. The Union has demanded that the workmen should be made permanent. Since the Management was not willing to accede to the request the Petitioner Union has raised the Industrial Dispute. At the time when the dispute was raised the Second Respondent was the Contractor. Subsequently the Third Respondent was inducted as the Contractor. This new contract is also a sham and nominal arrangement. The First Respondent is the real employer of the concerned workmen, 26 in number. These workmen are working continuously without any break. They have completed 240 days of service in each year from the date of their joining. They have completed 480 days of service in 24 calendar months also. These 26 workmen are retained on temporary basis only to deprive them permanent status and privileges available to regular permanent workers. An Award may be passed directing the First Respondent to absorb all the 26 workers in the establishment with effect from the date of completion of 240 days of service from the date of their joining, with all other benefits.

4. The First Respondent has filed Counter Statement contending as below:

The Petitioner is not a recognized union. It has no *locus-standi* to make the claim. The First Respondent disputes the membership of the concerned workmen in the Petitioner Union. The 26 workmen concerned in the dispute were never employees of the First Respondent. There was no privity of contract between them and the First Respondent. The identity, qualification and capability of these workers are unknown to the First Respondent. The operation and maintenance of electrical sub-station and other electrical systems of the First Respondent were outsourced on contract basis. The employment of workers was the responsibility of the Contractor. Whether the workers were continuously working in the Port is not known to the First Respondent. They are employees of the Contractor. The contracts for electrical works were being awarded to different Contractors. If some of the workers were continuously engaged for the work this was done by the contract agencies on their own. The First Respondent has no role in this. As per the terms of the contract the Contractor has to appoint an Engineer for managing and controlling the entire manpower, work allocation, supervision of works, etc. The First Respondent is not involved in the day to day activities carried out by the contract agency and its workers. Wages for the workmen are paid by the outsourced agency. All the statutory obligations regarding employment and protection of labour are to be looked after by the contracting agency only. Electrical maintenance work at the Port is perennial in nature. But this cannot make the Port the employer of the concerned workmen. The petitioner is not entitled to any relief.

5. The Third Respondent has filed Counter Statement contending as below:

The Third Respondent is a Company registered under the Companies Act. The First Respondent called for labour contract for managing, operating and maintaining sub-station electrical system, water pump houses and other electrical installation at the Ennore Port through e-tendering process. The Third Respondent participated in the tender and the work was awarded to the Third Respondent for a period of one year from 01.08.2013. The contract was later extended upto 31.01.2014. The Third Respondent is not a name lender as made out in the Claim Statement. It has registered under the Employees State Insurance Act, Employees Provident Fund Act and other labour legislations. It is providing labour contract to several establishments. When the Third Respondent had taken over the contract certain employees shown in the annexure to the Claim Statement approached the Third Respondent for employing them and they were given employment. On expiry of the contract with the First Respondent the concerned employees were engaged by another labour contractor. The petitioner has not claimed any relief against the Third Respondent. The claim is to be dismissed so far as the Third Respondent is concerned.

6. The petitioner has filed rejoinder denying the allegations in the Counter Statement and reiterating its case in the Claim Statement.

7. The evidence in the case consists of oral evidence of WW1 and WW2 and also documents marked as Ext.W1 to Ext.W61 and Ext.M1.

8. **The points for consideration are:**

- (i) Whether the First Respondent is justified in not absorbing the concerned workmen in the establishment?
- (ii) What, if any is the relief to which the concerned workmen are entitled?

The Points

9. The Petitioner Union has raised the dispute on behalf of 26 workmen whose names are annexed to the Order of Reference. It is the case of the petitioner that these workmen have been doing the work of operation and maintenance of electrical and allied works in the First Respondent establishment, that the work done by them is continuous and perennial in nature and that the contracts under which they were employed are only sham and nominal. According to the petitioner, though the Contractors changed frequently these workmen were continuously doing the work. Some of them have started to work in the year 1998 itself. All of them have put in work of several years. It is claimed by the petitioner that all the 26 workmen are entitled to be absorbed in the First Respondent establishment.

10. According to the First Respondent it has nothing to do with the engagement of the concerned workmen. Operation and maintenance of electrical and allied works were outsourced and the works were being carried out by different Contractors at different periods. Respondents 2 and 3 are two such Contractors. The First Respondent has nothing to do with the engagement of workmen. It is not aware if the same set of workmen were continuously doing the work. It does not have any control or supervision over the work. The entire work is carried out through the Contractors. The First Respondent is also raising a contention that the petitioner union has no *locus-standi* to raise the dispute.

11. Though, the *locus-standi* of the petitioner in raising the dispute is questioned by the First Respondent in the Counter Statement this is not seen seriously pressed into service during trial. The petitioner is a registered Trade Union as could be seen from Ext.W1-the Registration Certificate. Ext.W2 is the copy of Form "E" submitted by the Union under the Trade Unions Act. Ext.W3 consists of the subscription receipts of the concerned workmen in their capacity as

the members of the Union. So the contention that the petitioner has no right to raise the dispute as it is not a recognized Union will not hold good. To be able to raise the dispute it is not necessary that the Union is a recognized one.

12. The stand of the First Respondent is that it does not even know whether the concerned workmen have been working for the establishment continuously. According to it the workers are engaged by the Contractors. It is not necessary for it to know who are the persons that are engaged. The petitioner has produced enough documents to prove that the same set of workmen were engaged in the operation and maintenance of electrical and allied work in the establishment in spite of change of Contractors. Ext.W38 and Ext.W39 gives the details of the 26 workmen. The first name in Ext.W38 is that of Rajan whose designation is given as Driver in the entry permit meant for the Port. Subsequently his designation is seen changed as Electrician. The name of the Contractor through whom he is engaged also is given. The entry permits are seen issued showing the names of different Contractors. However, it could be seen from the details furnished that he had been working continuously at the Port in spite of change of Contractors. This is the case with the other workmen also. It could be seen that from the date of their engagement they have been continuously working for the First Respondent.

13. Apart from the documents referred to above there is also the evidence given by WW1, the General Secretary of the Union and also WW2, one of the workmen concerned in the case. It could be seen from the evidence of WW2 that 13 of the concerned workmen are ITI Certificate Holders in Electrician Trade. They have got "B" license from the competent authority. Five of them who had started as Helpers were utilized as Electricians and they were eligible to get "B" license but for the fact that experience certificates were not issued to them. Some of them are Plumbers and a few are Drivers. WW1 has asserted the fact that all the workmen are working continuously in the establishment in spite of change of Contractors. After Third Respondent another Contractor has taken over and now the workers are working under this new Contractor.

14. In the Counter Statement what the First Respondent has stated is that it does not know if the workmen are working continuously. During the evidence MW1, the Assistant Manager (Electrical) of the Port has repeated this stand. The First Respondent has not produced any documents to show that the workers engaged are someone else and the concerned workmen have nothing to do with the electrical and allied works in the establishment. So the case of the petitioner that all the workmen have been continuously working in the establishment is not controverted by any acceptable evidence. As per Section-29 of the Contract Labour (Regulation and Abolition) Act every principal employer and every contractor shall maintain registers and records giving particulars of contract labour employed, the nature of work performed by the contract labour, the rates of wages paid to the contract labours and such other particulars as may be prescribed. Apart from that, under Section-21(2) of the Act the Principal Employer shall nominate a representative to be present at the time of disbursement of wages by the Contractor and this representative is to certify the amount paid as wages as per Clause-4 of Section-21. If the Contractor fails to make payment of wages the Principle Employer shall be liable to make payment and to recover the amount from the Contractor. Ext.M1 a tender floated by R1 for the work in the year 2015 also negatives the stand of R1. As per Ext.M1 the Contractor shall furnish R1 the names and other details of the persons engaged. It even provides that prior approval should be obtained for weekly shift schedule charts. So the First Respondent cannot take shelter under ignorance as to whether the concerned workmen are working for them continuously under the Contractors or not.

15. The petitioner has contended in the Claim Statement itself that the First Respondent has not obtained any registration under the CLRA Act as prescribed under Section-7 of the Act. So also it is stated that none of the Contractors had any license as provided under the Act. In spite of this contention the First Respondent has not produced the Registration Certificate nor has the other Respondents produced the license. It is to be presumed that there is no registration or license for them as contemplated.

16. The reason for the absence of the Registration Certificates and licenses is apparent. The petitioner has produced Ext.W57 containing different notifications issued by the Government under Section-10 of CLRA Act. This shows the names of establishments in respect of which the notification issued and the nature of works that are prohibited by the notification. Item No. 14 of Ext.W57 dated 08.05.1991 is in respect of Major Ports. As seen from this, routine repairs and maintenance of electrical and mechanical equipments and also plumbing, gardening, conservancy and sanitation works are prohibited alongwith two other items. Thus it could be seen that the First Respondent was prohibited from doing the work of operation and maintenance of electrical and allied works and also plumbing works by outsourcing. It should have resorted to only direct employment. In fact Chennai Port of which the First Respondent was a part originally is having only permanent workers for doing these works. Ext.W14 is the list of such permanent workmen employed by Chennai Port Trust. The authenticity of this document is not denied by the First Respondent. Thus it could be seen that the First Respondent has resorted to contract system defying the prohibition by the notification referred to earlier.

17. The First Respondent has been resorting to outsourcing throughout to carry out operation and maintenance of electrical and allied works, as seen from the Counter Statement. The only dispute is that they do not know if the same set of workmen were continuing with the work. Reference was already made to the work details marked as Ext.W38

and Ext.W39 showing that they were continuously engaged. Ext.W40 to Ext.W41 are the Log Sheets maintained by the Contractor for the work done in the establishment. These Log Books are of the period from 2002. A perusal of these Log Sheets also would show that once engaged the workers were working continuously. They were engaged in three shifts and also in the general shift. It has been admitted by MW1 also that the electrical work done in the establishment are continuous and perennial in nature. The only contention is that this will not entitle the workers to be absorbed.

18. In spite of the prohibition the First Respondent has been employing the workmen throughout under the guise of contract work and retaining them as temporary workmen without providing them with any benefits. Item-10 of the Vth Schedule of the Industrial Disputes Act states that to employ workmen as badlis and casuals or temporaries and to continue them as such for years with the object of depriving them of status and privileges of permanent workmen is an unfair labour practice. Thus the First Respondent is acting against the provisions of Industrial Disputes Act and the CLRA Act. The concerned workmen are made to work for a long period without any benefits. The contracts through which they were employed are certainly sham and nominal. They are entitled to be (other than S.No. 2 in the annexure to the Schedule of Reference) absorbed in the establishment.

19. So far as S.No. 2 is concerned, he is not in employment now. He has been terminated from service. Though a few others who were terminated alongwith him were taken back on the basis of an Award. The adverse finding against him in the Award has become final. So there is no question of absorption of this workman.

20. The petitioner has claimed that the workmen are to be absorbed from the date on which they have completed 240 days of service. However, this could not be. They could be absorbed from the date on which the dispute has been raised.

On the basis of the above discussion an Award is passed as below:

S. Nos. 1 & 3 to 26 in the list of workmen attached to the Schedule of Reference shall be absorbed in the service of the First Respondent with effect from the date on which the dispute was raised.

These workmen shall be entitled to regular scale of pay and all other benefits due to permanent workmen, from that date.

Arrears of salary due to them shall be calculated and paid within two months from the date of publication of the Award.

In default interest is payable on the amount at the rate of 7.5% per annum from the date of the Award.

The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 18th July, 2017)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner Union : WW1, Sri K. Vijayan
WW2 Sri S. Naresh Kumar

For the 2nd Party/Management : MW1, Sri P. Sundaramoorthy

Documents Marked :

On the petitioner's side

Ex.No.	Date	Description
Ext.W1	-	Registration Certificate of the 1 st Party Union
Ext.W2	-	Form-e of the 1 st Party Union
Ext.W3	-	Subscription Receipts
Ext.W4	-	Identity Cards of the concerned workmen
Ext.W5	01.11.2006	Vehicle Inspection Report and Vehicle Work Order
Ext.W6	07.10.2008	2(K) dispute raised by the 1 st Party Union
Ext.W7	27.11.2008	Additional Claim Statement filed by the 1 st Party Union
Ext.W8	-	Letters given by the petitioners to the II Party/Party No. 1

Ext.W9	12.12.2008	Interim Order in WP No. 29437/2008
Ext.W10	25.04.2009	Letter given by the 1 st Party Union to the Assistant Labour Commissioner
Ext.W11	08.05.2009	Counter filed by the 2 nd Party/Party No. 1
Ext.W12	23.04.2013	Order in WP No. 11858/2013
Ext.W13	-	Internal Note
Ext.W14	01.04.2014	Permanent workmen list of the Chennai Port Trust
Ext.W15	19.08.2014	Order in WP No. 29437/2008
Ext.W16	30.10.2014	Additional dispute raised by the 1 st Party Union
Ext.W17	15.12.2014	Letter given by the 1 st Party Union to the 2 nd Party
Ext.W18	16.12.2014	Reply filed by the 2 nd Party/Party No. 1
Ext.W19	18.12.2014	Reply filed by the 2 nd Party/Party No. 3
Ext.W20	20.01.2015	Reply filed by the 2 nd Party/Party No. 2
Ext.W21	12.02.2015	Complaint under Section-33A filed before Assistant Commissioner of Labour
Ext.W22	20.03.2015	Failure Report
Ext.W23	10.04.2015	Reply filed by the 2 nd Party
Ext.W24	08.06.2015	Order of Reference
Ext.W25	11.08.2015	Rejoinder filed by the 1 st Party Union
Ext.W26	14.09.2015	Memorandum of Settlement
Ext.W27	30.09.2015	Award in ID No. 88/2013
Ext.W28	-	Requisition letter given by the Sub-Contractor to the 2 nd Party/Party No. 1
Ext.W29	19.02.2016	Letter given by the KPEU to the 2 nd Party
Ext.W30	28.03.2016	Letter given by the 1 st Party Union to the 2 nd Party
Ext.W31	-	Work done reports
Ext.W32	-	Consumer bills
Ext.W33	-	Consumers acknowledgements
Ext.W34	-	Materials gate pass and entry pass issued by the 2 nd Party
Ext.W35	-	Diesel purchase bills
Ext.W36	-	Leave application form approved by the 2 nd Party/Party No. 1
Ext.W37	-	Shift Schedule for month of January-2016 approved by the 2 nd Party/Party No. 1
Ext.W38	-	Service details of the 26 workmen concerned (separately filed) – Vol.1 -do- - Vol.2
Ext.W39	-	Log Sheets showing shift working and the details, details of work carried out by the workmen concerned (separately filed)
Ext.W40	-	Log Sheets from 08.05.2002 to 31.12.2002, Vol.1
Ext.W41	-	Log Sheets from 01.01.2003 to 31.12.2003, Vol-1, 2
Ext.W42	-	Log Sheets from 01.01.2004 to 30.12.2004, Vol-1
Ext.W43	-	Log Sheets from 01.01.2005 to 31.12.2005, Vol-1, 2
Ext.W44	-	Log Sheets from 01.01.2006 to 31.12.2006 Vol-1

Ext.W45	-	Log Sheets from 01.02.2007 to 09.01.2008, Vol-1, 2
Ext.W46	-	Log Sheets from 10.01.2008 to 31.12.2008, Vol-1, 2
Ext.W47	-	Log Sheets from 02.01.2009 to 31.12.2009, Vol-1, 2
Ext.W48	-	Log Sheets from 01.01.2010 to 31.12.2010 Vol-1, 2
Ext.W49	-	Log Sheets from 01.01.2011 to 13.12.2011 Vol-1, 2 3
Ext.W50	-	Log Sheets from 14.01.2012 to 31.12.2012 Vol-1 to 5
Ext.W51	-	Log Sheets from 01.01.2013 to 31.07.2013 Vol-1
Ext.W52	-	Shift schedule from September 2016, October 2016, November 2016 and December 2016
Ext.W53	-	Copy of the minutes and settlement dated 14.09.2015
Ext.W54	-	Document collecting dates regarding power requirement for ships
Ext.W55	-	Sitemap – 3 Nos (Past and present) (Drawings)
Ext.W56	-	Copy of the attendance for December 2016
Ext.W57	08.05.1991	Notification issued under Section-10 of the Contract Labour (Regulation and Abolition) Act, 1970 – No. U-23013/9/86
Ext.W58	04.11.2016	Oil Purchase for Port
Ext.W59	02.01.2017	Visitors Pass issued by TNEB while going there for receiving payments for the Port
Ext.W60	-	Inspection reports received by EB Officials
Ext.W61	-	Correspondent letters issued to EB

On the Management's side

Ex.No.	Date	Description
Ext.M1	23/11/2015 24.11.2015	Copy of Tender No. KPL/OP/ELE/07/2015 for Man power supply for Operating and Maintaining the Electrical Systems, water pumps and other Electrical installations at Kamarajar Port.

नई दिल्ली, 10 अगस्त, 2017

का.आ. 1893.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दिल्ली इंटरनेशनल प्राइवेट लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय नं. 1, नई दिल्ली के पंचाट (संदर्भ संख्या 42/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.08.2017 को प्राप्त हुआ था।

[सं. एल-20013/02/2017-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 10th August, 2017

S.O. 1893.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, New Delhi (Ref. No. 42 of 2014) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. Delhi International Airport (P) Ltd. and their workmen, which was received by the Central Government on 03.08.2017.

[No. L-20013/02/2017-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

ID No. 42/2014

Shri Kamal Kant,
S/o Shri Mohan Lal,
House NO.22/60, East Mehram Nagar,
Near Domestic Airport,
New Delhi

...Workman

Versus

1. The Management of Delhi International Airport (P) Ltd.
New Udaan Bhawan, Terminal III,
New Delhi 110 037
2. The Management of M/s. Aroon Aviation Services Pvt. Ltd.,
A-113, Road No.2, Mahipalpur Extension,
New Delhi – 110 037

...Managements

AWARD

Present dispute has been raised under the provisions of sub-section (2) of section 2-A of the Industrial Disputes Act, 1947 (in short the Act). Shri Kamal Kant, the claimant presents that a period of 45 days stood expired from the date of making his application before the Conciliation Officer. According to him, sub-section (2) of section 2-A of the Act empowers him to file a dispute before this Tribunal, without being referred by the appropriate Government. His contention stands substantiated by the provisions of sub-section (2) of section 2-A of the Act. Claimant has been given a right by the Act to approach this Tribunal in case of discharge, dismissal, retrenchment or otherwise termination of his service, without a dispute being referred by the appropriate Government under sub-section (1) of section 10 of the Act.

2. Claim statement was filed by the claimant herein averring herein that Delhi International Airport (P) Ltd.(in short DIAL) has entered into an agreement OMDA with Airport Authority of India for operation, management and development of Indira Gandhi International Airport in the year 2008. Hence, the job of providing ground handling and other services to the Airlines is the job of DIAL. M/s. Aroon Aviation Services Pvt., (contractor) is a ground handling service under the control and supervision of DIAL. The claimant was employed by DIAL through the contractor as Store Assistant with effect from 22.06.2011 and since then he has been serving the management with utmost sincerity, diligence and without giving any chance of complaint. Suddenly, his services were terminated on 10.04.2013 levelling false, incorrect, uncalled for allegation wholly based on its presumption and assumption without affording any opportunity of being heard. Termination of service without one month notice, pay in lieu thereof and without conducting domestic enquiry is illegal, wrongful unjustified and against the principles of natural justice and in violation of mandatory provisions of Section 25-F of the Act. Demand notice served on the management on 03.06.2013 remained unresponded. The workman is unemployed since the date of his illegal termination. Finally, a prayer has been made by the claimant to set aside his order of termination and to reinstate him in service with continuity and full back wages.

3. Written statement was filed by DIAL wherein various preliminary objections, inter alia of deletion of the party from the array of parties, certificate issued by the Conciliation Officer being erroneous/being bad in law, claimant being engaged and under the direct control of the contractor and there being no privity of contract between the claimant and DIAL and DIAL having principle-to-principle relation relationship with various Airlines to provide ground handling services etc. On merits, DIAL has denied the various averments contained in the statement of claim. It is, it is prayed that the claim statement be rejected as being misconceived, baseless and untenable.

4. Written statement was also filed by M/s. Aroon Aviation Services Pvt. Ltd. taking preliminary objections, inter alia of Tribunal not having jurisdiction to adjudicate the case, concealment of material facts, claim not being specific as to from whom he is seeking relief, the claimant being dismissed for having committed serious acts of misconduct etc. On merits, it has been averred that the claimant was dismissed as the contractors had lost confidence in the claimant. The claimant was engaged as Stores Assistant and during a joint stock check conducted on 04.04.2013, various serious discrepancies were found, i.e. 85 dangri and nil Swagat Seva Apral were found. However, the claimant got issued a purchase order No.10410 on 25.02.2013 to M/s. S.A. Traders for 100 Dangri, 100 Swagat Seva Aprons and 1000 caps. Bill was issued by M/s S.A. Traders which was received by the claimant wherein only 85 Dongris were supplied. Thus, the claimant was hand in glove with M/s. S.A. Traders and tried to embezzle an amount of

Rs.24,750.00. Purchase order No.10440 issued to M/s. Chandu Lal and Sons were put up for approval to the competent authority, wherein it was found that rates for cleaning agents were in excess of the quotation mentioned by the firm. The claimant was issued a show cause notice and his reply to the same was found unsatisfactory. His acts being very serious and criminal in nature, the claimant was terminated. Finally, a prayer has been made to reject the claim.

5. In the meanwhile, an application was moved on behalf of the contractors, M/s. Aroon Aviation Services Pvt. Ltd. for rejection of claim on the grounds of jurisdiction. However, despite affording of several opportunities to the claimant, neither reply was filed by the claimant nor did any person appear on behalf of the claimant.

6. Since the neither the claimant nor any authorized representative on his behalf has put in their appearance nor have they led any evidence so as to prove their cause against the management, as such, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : May 12, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 10 अगस्त, 2017

का.आ. 1894.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 46/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.07.2017 को प्राप्त हुआ था।

[सं. एल-20012/47/2013-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 10th August, 2017

S.O. 1894.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 46 of 2013) as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 21.07.2017.

[No. L-20012/47/2013-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 46 of 2013

Employer in relation to the management of W.J. Area of M/s. BCCL

AND

Their workman

Present : Shri R.K. Saran, Presiding Officer

Appearances :

For the Employers : Shri D.K.Verma, Advocate

For the workman : Shri Pintu Mondal, Rep.

State : Jharkhand

Industry : Coal

Dated : 23/06/2017

AWARD

By order No.-L-20012/47/2013/ IR-(CM-I), dated. 23/09/2013 the Central Govt. in the Ministry of Labour has, in exercise of powers conferred by clause (d) of Sub –Section (1) and Sub-Section (2A) of Section 10 of the Industrial Disputes Act.1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Bhatdih Colliery under W.J.Area of M/S BCCL in dismissing Sri Bishwanath Gope from the services w.e.f. 20/02/2007 is fair and justified? To what relief the concerned workman is entitled to?”

2. The case is received from the Ministry of Labour on 04.10.2013. After receipt of reference, both parties are noticed. The Sponsoring Union files their written statement on 13.06.2016. The management files their written statement -cum-rejoinder on 19.08.2016. Thereafter documents filed by both side. The point involved in the reference is that the workman has been dismissed from his services.

3. During preliminary hearing of this case, domestic enquiry held by the management is accepted by the Sponsoring Union/workman as Fair & Proper. Thereafter document of the management is marked as Ext. M-1 to M-8.

4. The point involved in the reference is that the workman has been dismissed from his services on the ground of long absence. But he has already out of service for 10 years. It is felt to give another chance to the workman to serve.

5. Considering the facts and circumstances of this case, I hold that he be taken into job as a fresh employee in Cat-1. But the workman be kept under probation for a period two year. Therefore the question of back wages does not arise at all.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 10 अगस्त, 2017

का.आ. 1895.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 24/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.07.2017 को प्राप्त हुआ था।

[सं. एल-20012/138/2011-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 10th August, 2017

S.O. 1895.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 24 of 2012) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 21.07.2017.

[No. L-20012/138/2011-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 24/2012

Employer in relation to the management of Sijua Area of M/s. BCCL

AND

Their workman

Present : Shri R.K. Saran, Presiding Officer

Appearances :

For the Employers : Shri D.K.Verma, Advocate

For the workman : None

State : Jharkhand

Industry : Coal

Dated : 23/06/2017

AWARD

By order No. L-20012/138/2011-IR(CM-1) dated 14/03/2012, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub -section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the demand raised by the Union for payment of wages from Feb. 07 to 31.12.2007 to Shri Attullah Khan, Ex. Loading Clerk by the management of Nitcipur Colliery of M/s BCCL is genuine and justified? To what relief the concerned workman is entitled to?”

2. After receipt of the reference, both parties are noticed. But none appears on behalf of the sponsoring Union/workman. Management is present. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 10 अगस्त, 2017

का.आ. 1896.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 26/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.07.2017 को प्राप्त हुआ था।

[सं. एल-20012/65/2010-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 10th August, 2017

S.O. 1896.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 26 of 2011) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 21.07.2017.

[No. L-20012/65/2010-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD**

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 26/2011

Employer in relation to the management of P.B. Area of M/s. BCCL

AND

Their workman

Present : Shri R.K. Saran, Presiding Officer**Appearances :**

For the Employers : Shri D.K.Verma, Advocate

For the workman : None

State : Jharkhand

Industry : Coal

Dated : 22/06/2017

AWARD

By order No. L-20012/65/2010-IR(CM-1) dated 26/04/2011, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Pootki Colliery of M/s. BCCL in not regularizing S/Sh. Amir Saw, Rameshwar Paswan, Ram Baran Das, Ram Kushun Ram and Subhan Ansari as Piece Rated Trammers is fair and justified? To what relief the concerned workmen are entitled?”

2. After receipt of the reference, both parties are noticed. During the pendency of the case Sponsoring Union submits that the case has already been settled out of court between management and Sponsoring Union. The Union also submits that the union has no dispute left with the management. It is felt that the disputes between the parties has been resolved in the meantime. Hence “No dispute” Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 10 अगस्त, 2017

का.आ. 1897.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 27/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.07.2017 को प्राप्त हुआ था।

[सं. एल-20012/71/2010-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 10th August, 2017

S.O. 1897.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 27 of 2011) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 21.07.2017.

[No. L-20012/71/2010-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 27/2011

Employer in relation to the management of P.B. Area of M/s. BCCL

AND

Their workman

Present : Shri R.K. Saran, Presiding Officer

Appearances :

For the Employers : Shri D.K.Verma, Advocate

For the workman : None

State : Jharkhand Industry : Coal

Dated : 22/06/2017

AWARD

By order No. L-20012/71/2010-IR(CM-1) dated 15/04/2011, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Pootki of M/S BCCL in not regularizing S/Sri Lalchand Bhar and 24 other as P.R. Trammer is fair and justified? To what relief the concerned workmen is entitled to ??”

Note:-List of workmen is not enclosed alongwith order of reference.

2. After receipt of the reference, both parties are noticed. During the pendency of the case Sponsoring Union submits that the case has already been settled out of court between management and Sponsoring Union. The Union also submits that the union has no dispute left with the management. It is felt that the dispute between the parties has been resolved. Hence "No dispute" award is passed. communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 10 अगस्त, 2017

का.आ. 1898.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 61/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.07.2017 को प्राप्त हुआ था।

[सं. एल-20012/73/2009-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 10th August, 2017

S.O. 1898.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 61 of 2009) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 21.07.2017.

[No. L-20012/73/2009-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 61/2009

Employer in relation to the management of E.J. Area of M/s. BCCL

AND

Their workman

Present : Shri R.K. Saran, Presiding Officer

Appearances :

For the Employers : None

For the workman : None

State : Jharkhand

Industry : Coal

Dated : 21/06/2017

AWARD

By order No. L-20012/73/2009-IR(CM-1) dated 30/10/2009, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

"(i) Whether the action of the Management of Bhowra(S) Colliery of M/s BCCL in dismissing Sri Sanatan Manjhi, Mines/Loader, w.e.f. 20/12/2004 is justified & legal ? (ii) To what relief is the workman concerned entitled?"

2. After receipt of the reference, both parties are noticed. But none appears from either side. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 10 अगस्त, 2017

का.आ. 1899.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/त्रिम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 05/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.07.2017 को प्राप्त हुआ था।

[सं. एल-20012/19/2009-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 10th August, 2017

S.O. 1899.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 05 of 2009) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 21.07.2017.

[No. L-20012/19/2009-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 05/2009

Employer in relation to the management of Lodna Area of M/s. BCCL

AND

Their workman

Present : Shri R.K. Saran, Presiding Officer

Appearances :

For the Employers : Shri U.N. Lall, Advocate

For the workman : None

State : Jharkhand

Industry : Coal

Dated : 23/06/2017

AWARD

By order No. L-20012/19/2009-IR(CM-1) dated 10/02/2009, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“(i) Whether the demand of the Rashtriya Colliery Mazdoor Sangh from the Management of Bararee Colliery of M/s BCCL to grant annual increment according to NCWA-V/VI/VII/ from 01.07.1996 to Shri Ram Kishun Saw, Banksman is justified? (ii) To what is the workman concerned entitled and from what date?”

2. After receipt of the reference, both parties are noticed. But none appears on behalf of the sponsoring Union/workman. Management is present. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 10 अगस्त, 2017

का.आ. 1900.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 56/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.07.2017 को प्राप्त हुआ था।

[सं. एल-20012/75/2009-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 10th August, 2017

S.O. 1900.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 56 of 2009) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 21.07.2017.

[No. L-20012/75/2009-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 56/2009

Employer in relation to the management of Sijua Area of M/s. BCCL

AND

Their workman

Present : Shri R.K. Saran, Presiding Officer

Appearances :

For the Employers : None

For the workman : None

State : Jharkhand

Industry : Coal

Dated : 22/06/2017

AWARD

By order No. L-20012/75/2009-IR(CM-1) dated 13/10/2009, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“(i) Whether the action of the Management of Sendra Bansjora Colliery of M/s BCCL in not regularizing Shri Sukhdeo Yadav as TMB Operator is justified and legal? (ii) To what relief is the workman concerned entitled?”

2. After receipt of the reference, both parties are noticed. But none appears from either side. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 10 अगस्त, 2017

का.आ. 1901.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 17/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.07.2017 को प्राप्त हुआ था।

[सं. एल-20012/12/2009-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 10th August, 2017

S.O. 1901.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 17 of 2009) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 21.07.2017.

[No. L-20012/12/2009-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 17/2009

Employer in relation to the management of Kustore Area of M/s. BCCL

AND

Their workman

Present : Shri R.K. Saran, Presiding Officer

Appearances :

For the Employers : None

For the workman : None

State : Jharkhand Industry : Coal

Dated : 27/06/2017

AWARD

By order No. L-20012/12/2009-IR(CM-1) dated 30/03/2009, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“(i) Whether the action of the Management of East Bhagatdih Colliery under Kustore Area of M/s. BCCL in dismissing Shri Vijay Beldar, Fitter from the services of the company w.e.f. 26.05.2003 is legal and justified? (ii) To what relief is the workman concerned entitled?”

2. After receipt of the reference, both parties are noticed. But none appears from either side. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 10 अगस्त, 2017

का.आ. 1902.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 06/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.07.2017 को प्राप्त हुआ था।

[सं. एल-20012/19/2007-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 10th August, 2017

S.O. 1902.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 06 of 2010) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 21.07.2017.

[No. L-20012/19/2007-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD**

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 06/2010

Employer in relation to the management of Sijua Area of M/s. BCCL

AND

Their workman

Present : Shri R.K. Saran, Presiding Officer**Appearances :**

For the Employers : None

For the workman : None

State : Jharkhand Industry : Coal

Dated : 27/06/2017

AWARD

By order No. L-20012/19/2007-IR(CM-1) dated 30/12/2009, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“(i) Whether the action of the Management of Sendra Bansjora Colliery under Sijua Area of M/s BCCL in dismissing Shri Mannu Mahato, Driver from the services of the company w.e.f. 21.11.2006 is justified and legal? (ii) To what relief is the workman concerned entitled?”

2. After receipt of the reference, both parties are noticed. But none appears from either side. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 10 अगस्त, 2017

का.आ. 1903.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 20/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.07.2017 को प्राप्त हुआ था।

[सं. एल-20012/166/2002-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 10th August, 2017

S.O. 1903.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 20 of 2009) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. CCL and their workmen, which was received by the Central Government on 21.07.2017.

[No. L-20012/166/2002-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD**

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 20/2009

Employer in relation to the management of Karo Special Project of M/s. CCL

AND

Their workman

Present : Shri R.K. Saran, Presiding Officer**Appearances :**

For the Employers : None

For the workman : None

State : Jharkhand Industry : Coal

Dated : 21/06/2017

AWARD

By order No. L-20012/166/2002-IR(CM-1) dated 02/04/2009, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“(i) Whether the action of the Management of Karo Special Project of M/S CCL in not providing employment Khoro Manjhi, dependeant of late Dailu Manjhi PRW, under the provisions of NCWA is justified and legal? (ii) To what relief is the defendant of late Dailu Manjhi entitled?”

2. After receipt of the reference, both parties are noticed. But none appears from either side. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 10 अगस्त, 2017

का.आ. 1904.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 07/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.07.2017 को प्राप्त हुआ था।

[सं. एल-20012/130/2007-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 10th August, 2017

S.O. 1904.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 07 of 2010) as shown in Annexure, in the industrial dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 21.07.2017.

[No. L-20012/130/2007-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD**

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 07/2010

Employer in relation to the management of W.J. Area of M/s. BCCL

AND

Their workman

Present : Shri R.K. Saran, Presiding Officer

Appearances :

For the Employers : Shri D.K.Verma, Advocate

For the workman : None

State : Jharkhand

Industry : Coal

Dated : 27/06/2017

AWARD

By order No. L-20012/130/2007-IR(CM-1) dated 14/01/2010, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“(i) Whether the demand of the Rashtriya Colliery Mazdoor Congress from the management of moonidih and PB Project of M/s BCCL for proper pay fixation and grant of annual increment from 1995 to 2000 Shri Diwakar Mahto, SCPA is justified and legal (ii) To what relief is the workman concerned entitled?”

2. After receipt of the reference, both parties are noticed. But none appears on behalf of the sponsoring Union/workman. Management is present. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 10 अगस्त, 2017

का.आ. 1905.—आौद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार हांगकांग और शंघाई निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट आौद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. II, दिल्ली के पंचाट (संदर्भ संख्या 233/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.08.2017 को प्राप्त हुआ था।

[सं. एल-12012/74/2010-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 10th August, 2017

S.O. 1905.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 233/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Delhi as shown in the Annexure, in the industrial dispute between the management of Hong Kong and Shanghai Corporation and their workmen, received by the Central Government on 10.08.2017.

[No. L-12012/74/2010-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

**BEFORE SH. HARBANS KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO-II, KARKARDOOMA COURT COMPLEX, DELHI**

ID.No. 233/2011

Shri Chetan Kandpal,
2148, Indira Nagar,
Lucknow-226016.

Versus

The Chief Executive Officer,
Hong Kong and Shanghai Corporation (HSBC).
M.G Road , P.O. Box. 128,
Mumbai-400001

AWARD

It is relevant to mention here that fresh reference No. L-12012/74/2010(IR(B-I) dated 24.05.2011 issued by Ministry of Labour of Government of India to this Tribunal for adjudication of following question:-

“Whether the action of the management of Hongkong & Sanghal Banking Corporation (HSBC) Ltd., New Delhi in terminating the services of Shri Chetan Kandpal , Ex-Relationship Manager, Consumer Finance w.e.f 22.05.2009, legal and justified? To what relief the workman is entitled?”

Which has been received on 11.07.2011 in case of Sh. Chetan Kandpal.

Which has been registered as ID. No. 233/2011 . Notice to parties were issued for filing claim statement on 3.08.2011 by workman

On 3.8.2011 Ld. A/Rs for parties appeared .

Workman filed claim statement. Wherein he prayed as follows:-

- a. An order in favour of the workman and against the management company for re-instatement of the workman with full back wages from the date of his illegal termination and other consequential benefits arising therewith;
- b. The cost of the claim and
- c. Any other proper and further orders that this Hon'ble Court may deem fit.

Copy of claim statement supplied to management of HSBC. Fixed 18.8.2011 for filing of written statement.

On 18.8.2011 an application is filed on behalf of the management seeking dismissal of the reference order, on the ground that a dispute has been raised by the Claimant before CGIT.No. 2, New Delhi under section 2A of Industrial Dispute Act, 1947 (in short the Act), without being referred for adjudication by its appropriate government. It has been asserted that reference of the very dispute to this Tribunal for adjudication, has been made without any jurisdiction.

On which my Ld.Predecessor Dr. R.K. Yadav passed following order:-

Attention of Sh. Naqui is invited to section 10(1) (d) of the Act, which empowers the appropriate government to refer a dispute for adjudication which is a deemed industrial dispute under section 2 A of the Act.

Admittedly provisions of sub-section (2) of section 2 A and Section 10(1) (d) of the Act overlaps and leaves a scope for the situation like present one, but reference order is to be answered by the Tribunal and it cannot be dismissed on the reasons that a dispute raised under section 2A (2) of the Act pends adjudication before another Tribunal. It was for the parties to inform the appropriate government of pendency of the dispute before the CGIT No. 2 , New Delhi to avide exercise of powers under section 10(1) of the Act, which recourse was not adopted .

Provisions of section 10 C.P.C have no application before the Tribunal. Under these circumstances within dismissal of the reference nor stay of proceedings (in the present reference) is permissal by law. Provisions of rule 10(B) (2) of (3) of the Industrial Dispute (Central Rules , 1957, as the case may be, do not leave any room for filing such an application . Above provisions command the opposite to file its written statement . In view of these proportion the application is dismissal, with an advice to the management to plead all these facts, raised in the application , in its written statement.

Adjourned for filing of written statement for 7.9.2011.

On 7.9.2011: Present:- Navin Raheja , A/R for the claimant.

Sh. Syed Naqui , A/R for the management. Written statement, besides documents, filed. Copy given. I have perused pleadings of the parties. The management takes an objection that on deemed reference under section 2 A of the Industrial Disputes Act, 1947 (in short the Act) subsequent reference u/s 10(1) (d) of the Act can not survive and is illegal. Alas! this objection doesnot have any legal support. Provisions of section 10(1) of the Act anticipates a subsequent reference , which would have an effect of super pending the earlier reference. Hence on exercise of powers under section 10(1) (d) of the Act, deemed reference under section 2A (2) of the Act stands superseded. Out of pleadings , following issues are settled:-

1. Whether the claimant is not a workman within the meaning of section 2(s) of the Act?
2. Whether his termination of services vide order dated 22.5.2009 amounts to retrenchment , as defined in section 2(oo)of the Act? If yes its effect.
3. As in terms of reference.

4. Relief.

On 20.10.2011 this case was transferred by Hon'ble High Court of Delhi to this Tribunal from CGIT com labour court no. 1.

On 8.4.2013 My Ld. Predecessor Dr. R.K Yadav clubbed the ID.Case no. 233/11 and as well as ID. No. 2/16 as both were relating to same ID.

Sh. Chetan Kandpal filed affidavit in his evidence copy of which supplied to management . Fixed 15.5.2013 for tendering of affidavit and cross-examination of workman as well as evidence of management. Claimant to conclude first .

On 15.5.2015 testimony of claimant was recorded but cross-examination of workman was deferred to 17.7.2013 subject to cost of Rs. 1000 alongwith evidence of management.

Claimant in support of his case produce himself as WW1 alongwith documents. He was cross-examined and his cross-examination concluded.

Therefore management in support of its case produced MW1 and MW2.

After conclusion of evidence of parties Ld. A/R's for both parties filed written arguments. Copy of which supplied to other parties.

Contents of written arguments of workman are as follows:-

1. The claimant worked from 13/08/2007 till 22/05/2009 when the employment of claimant was terminated without any reasons or basis or providing any notice.

2. The claimant was workman within the definition of section 2(s) of the Industrial Dispute Act, 1947 and was entitled to the protection under the said Act. The claimant is workmen under the said Act for the following reasons:-

➤ At the time of the illegal termination of the claimant the job description of the claimant as per the Ex. W1/M2 mentions that the claimant while working under the Lime Manager, has to acquire quality premier relationships for HSBC i.e. to open bank accounts ensuring the quality of account sourced meet the mandated threshold, cross-sell the bank products, ensure KYC/AMC norms of the bank etc.

This goes on to show that the job description of the claimant at the time of termination of service was merely clerical in nature and neither administrative nor supervisory in nature.

➤ That the job description as per Ex. W1/M2 further make it clear that the claimant was not handling any team rather he was a member of Team led by Line Manager – Romit Bajaj and the claimant has to attend products/process training sessions as prescribed by the team leader.

➤ The management neither gave name of any team member of claimant neither examined any such member.

➤ fact that the claimant was working in the team led by team leader – Romit Bajaj and there was a counter signing manager above Line Manager, has been admitted by MW1.

It all proves that the claimant was working under the directions of the Line Manager and counter signing manager and as such his job merely clerical in nature.

It has been held by the Hon'ble Supreme court of India that it is not the job title rather the principal duties performed have to be seen in deciding the nature of job.

Anand Bazar Patrika (P) Ltd. versus The Workmen (1970) 3SCC 248 Shri Muralidharan K versus The Management of the Circle Freight Intl. (India) P. Ltd (2007) 96 DRJ 14.

3. That as the offer letter Ex. WW1/1, the employment of the claimant cannot be terminated without any reasons simplicitor.

4. That the claimant was working sincerely and performing good in his duties however he was forced to resign as he has pointed out mis-deeds of the management and his employment was terminated with malafide intention when he did not resign. It is apparent from the following facts:-

➤ The claimant was put on PIP despite achieving 70% of the job targets which is apparent from the mail dated 23/06/2008. (Document of the Management).

➤ The mail dated 25/07/2008 sent by Vice-President HR (admitted document of management) further show that the management wanted the claimant to resign.

- No enquiry was ever conducted against the claimant neither any mis-deed or default was ever there against the claimant.
- Further the management has not given three months salary to the claimant if there has been any default etc. as it is a condition of the letter of appointment.

It is therefore prayed that the prayer of the claimant made in the claim petition may kindly be allowed in the interest of justice.

Against written arguments of workman, management filed written arguments. Contents of written arguments of management are as follows:-

1. At the outset, it is submitted that both the industrial disputes are same and identical. ID No. 233 of 2011 arose out of reference dated 24.05.2011, whereas ID No. 2 of 2011 is the statement of claim filed under Section 2A of the Industrial Disputes Act. Vide order dated 08.04.2013, both the cases were clubbed and ID No. 233 of 2011 was ordered to be treated as main case.

2. Following issues in the matter were framed on 07.09.2011:-

- a) Whether Claimant is not a workman within the meaning of Section 2(s) of the Industrial Disputes Act?
- b) Whether termination of the services of the workman vide order dated 22.05.2009 amounts to retrenchment as defined in Section 2(oo) of the Act? If yes, its effect.
- c) As in terms of reference.

3. **ADMITTED FACTS:**

The Claimant was appointed on 06.08.2007 and was terminated on 22.05.2009. Thus, the Claimant has worked with the Management only for a period of one year and nine months. In the pleadings, there is an admission that the Claimant was employed as a Relationship Manager in Consumer Finance.

4. **SUBMISSIONS:**

With this brief background of admitted position on record, the Management makes following submissions to argue that the Claimant is not a workman.

- 4.1 In the pleadings, there is no such claim that the Claimant is a workman.
- 4.2 The evidence on record proves beyond doubt that the Claimant is not a workman.
- 4.3 Even if it is assumed that he is a workmen, there is complete compliance of Section 25-F as far as payment of compensation is concerned. He worked only for one year nine months.
- 4.4 In any case and without prejudice to other submissions, the Claimant is not entitled to the relief of reinstatement.
- 4.5 Documents, Ex. W1/3, Ex. W1/6 and Ex. W1/11, cannot be read in evidence.
- 5. The submissions made in paragraph 4 above are further elaborated in terms of below:-

A. **PLEADINGS:**

- a) In the statement of claim, there is no assertion that the Claimant is a workman within the meaning of Section 2(s) of the Industrial Disputes Act.
- b) On the contrary, the Claimant admits that he was employed as a Relationship Manager in Consumer Finance.
- c) In the written statement filed by the Management on Page 11, Preliminary Objection No. (iv) was taken that the Claimant is not a workman.
- d) There is no replication, which has been filed by the Claimant and he opted to file the evidence and has only examined himself as a sole witness in the case.
- e) The statement of claim is absolutely silent with regard to the job responsibilities and the nature of duties, which were being performed by the Claimant in a short service of one year and nine months. In the respectful submission of the Management, the onus is more on the Claimant to prove that he is a workman and in the light of complete silence in the pleadings, an adverse inference is to be drawn that the Claimant is not a workman.

B. **EVIDENCE:**

- a) In the examination-in-chief, except for a vague statement that the Claimant is a workman, there is no other evidence which has been led by the Claimant to establish that he is a workman.
- b) On the contrary, the admissions made in the cross-examination establish that the Claimant is not a workman and in this regard, following be noted:
 - He admits that Officers in the Management are given a Band and that he was appointed in Band 7.
 - He also admits that the document exhibited as Ex.WW1/M1 contains correct job description of the Relationship Manager.
 - A bare perusal of Ex. WW1/M1 would demonstrate that the nature of responsibilities, which he was performing and which he was supposed to perform would mean that the Claimant was performing manual, skilled, unskilled, technical operations, clerical or supervisory work. It will also demonstrate that the Claimant was employed mainly in a managerial and administrative capacity and by the nature of duties attached to his office and also by the reason of powers vested in him, his functions were mainly of managerial nature.
 - Not only the document exhibited as Ex. WW1/M1 establishes this fact, but also the Claimant admits that document Ex. WW1/M2 describes his job description of Senior Premier Sales Associate. He also admits that he was transferred to Delhi as Senior Premier Sales Associate vide letter dated 08.10.2008.
 - Document Ex. WW1/M2 establishes his purpose of job and also narrates overall high level summary of job. This document, which exists on Page 46 of the list of documents dated 09.08.2013 proves beyond doubt that the Claimant is not a workman.
 - He also admits that he used to procure customers for account opening in individual capacity. He explains that by individual capacity, he means that he was working with his own discretion and was not handling any sales team under him.
 - The Claimant also admits document Ex. WW1/M3, which is on Page 14 of the list of documents and which is also his performance improvement plan. The Claimant admits that as per this document, he was required to source 50 new borrowers for the bank having requirement of Rs.50,000/- or more.
 - He also admits that he was to source the accounts with the help of hiring team, which goes to prove that he was leading a team. He further explains that his hired team members were not bank employees, but were third parties. His own explanation proves beyond doubt that he was leading a team of persons engaged by the bank through vendors to facilitate the procurement of the borrowers.
 - Not only that, he also admits that the maintaining cost of acquisition of loan was his responsibility.
 - He also admits that he used to ensure that the customers are sourced as per the policy of HSBC.
 - He also admits that he used to motivate the team members to source customers in a rightful manner.
 - He also relies upon an email exhibited as Ex. WW1/M4 sent by him to the Management dated 16.06.2008. Refer to document on Page 15. Reading of this mail would also demonstrate that while describing his own job responsibilities, he cannot be considered as a workman.
 - He admits that as an employee of HSBC, he establishes system and established business of Personal Loan in a city like Lucknow.
 - He admits his past working as a Relationship Manager with Citi Financial and with ICICI as Sales Officer.
 - Having admitted his role as to what he was actually doing, leaves no ambiguity and establishes that the Claimant is not a workman within the meaning of Section 2(s) of the Industrial Disputes Act.

c) On behalf of the Management, evidence by way of affidavit has been filed by Mr. Angad Varma. Mr. Angad has highlighted the facts to prove as to why the Claimant is not a workman. There is not even a slightest of cross-examination on the evidence, which was adduced by the Management. There is not even a suggestion, which has been given to Mr. Angad with regard to various depositions made in his affidavit.

C. **COMPLIANCE OF SECTION 25-F:**

Without prejudice, it is submitted that there is complete compliance of Section 25-F. Admittedly, the Claimant has worked for a period of one year nine months. His monthly salary was Rs.32,850/- Admittedly, he was given a cheque of Rs.98,550/- at the time of termination, which is much more than the amount, which he would have been entitled to under Section 25-F.

D. **RELIEF OF REINSTATEMENT CANNOT BE GIVEN:**

- a) He was working under contract of employment, which envisages that on termination, he will get salary equivalent to three months. Refer to document Ex. W1/1.
- b) The said payment was made and which was accepted without protest. The raising of the claim was only an afterthought.
- c) In the facts of the case, where his performance was not up to mark (refer to document Ex. WW1/10) and also in the light of the fact that he worked only for a short duration in the organization, under no circumstances, he is entitled to relief of reinstatement.
- d) Also highlight the fact that he is working and is gainfully employed.

E. Therefore, it is respectfully submitted that in the light of submissions made, the following judgments are being relied upon:-

- a) *Assistant Engineer, Rajasthan State Agriculture Marketing Board vs. Mohan Lal*, (2013) 14 SCC 543.
- b) *Standard Chartered Bank vs. Vandana Joshi*, 2009 SCC Online Bom 2057: (2010) 2 Mah LJ 22.
- c) *In-charge Officer &Anr. vs. Shankar Shetty*, 2010 (8) SCALE 583.
- d) *Hong Kong & Shanghai Bank vs. Govt. of India &Anr.*, W.P. (C) 12602 OF 2006, Decided on 24.09.2008.

F. Lastly, it is submitted that the documents, Ex. W1/3, Ex. W1/6 and Ex. W1/11 cannot be read in evidence.

It is, therefore, submitted that an Award dismissing the claim of the Claimant be passed.

In the light of contentions and counter contention mentioned in written arguments and oral arguments. I perused the pleadings and evidence of parties on record including principle laid down in cited rulings by Ld. A/R's for the parties and settled law on the points.

Prior to discussion evidence on record. It is relevant to mention here that procedure in ID. case provided in Rule 10-B of Industrial Dispute (Central) Rules 1947 is to be mentioned here. Which is as follows:-

1. While referring an industrial dispute for adjudication to a Labour Court , Tribunal or National Tribunal, the Central Government shall direct the party raising the dispute to file as statement of claim complete with relevant documents, list of reliance and witnesses with the Labour Court, Tribunal or National Tribunal within fifteen days of the receipt of the order of reference and also forward a copy of such statement to each one of the opposite parties involved in the dispute.
2. The Labour Court Tribunal or National Tribunal after ascertaining that copies of statement of claim are furnished to the other side by party raising the dispute shall fix the first hearing on a date not beyond one month from the date of receipt of the order of reference and the opposite party or parties shall file their written statement together with documents, list of reliance and witnesses within a period of 15 days from the date of first hearing and simultaneous forward a copy thereof to the other party.
3. Where the Labour Court, Tribunal or National Tribunal , as the case may be, finds that the party raising the dispute though directed did not forward the copy of the statement of claim to the opposite party or parties, it shall give direction to the concerned party to furnish the copy of the statement to the opposite party or parties and for the said purpose or for any other sufficient cause, extend and the time –limit for

filings the statement under sub-rule(1) or written statement under sub-rule (2) by an additional period of 15 days.

4. The party raising a dispute may submit a rejoinder if it chooses to do so, to the written statement (s) by the appropriate party or parties within a period of fifteen days from the filing of written statement by the latter.
5. The Labour Court, Tribunal or National Tribunal, as the case may be, shall fix a date for evidence within one month from the date of receipt of the statements, documents, list of witnesses, etc., which shall be ordinarily within sixty days of the date on which dispute was referred for adjudication.
6. Evidence shall be recorded either in Court or on affidavit but in the case of affidavit the opposite party shall have the right to cross-examine each of the deponents filing the affidavit. As the oral examination of each witness proceeds, the Labour Court, Tribunal or National Tribunal shall make a memorandum of the substance of what is being deposed. While recording the evidence the Labour Court, Tribunal or National Tribunal shall follow the procedure laid down in Rule 5 of Order XVIII of the First Schedule to the Code of Civil Procedure, 1908.
7. On completion of evidence either arguments shall be heard immediately or a date shall be fixed for arguments /oral hearing which shall not be beyond a period of fifteen days from the close of evidence.
8. The Labour Court, Tribunal or National Tribunal, as the case may be shall not ordinarily grant an adjournment for a period exceeding a week at a time but in any case not more than three adjournments in all at the instance of the parties to the dispute.

Provide that the Labour Court, Tribunal or National Tribunal, as the case may be, for reasons to the recorded in writing , grant an adjournment exceeding a week at a time but in any case not more than three adjournments at the instance of any one of the parties to the dispute.

9. In case any party defaults or fails to appear at any stage the Labour Court, Tribunal or National Tribunal, as the case may be, may proceed with reference ex-parte and decide the reference /application in the absence of the defaulting party:

Provided that the Labour Court, Tribunal or National Tribunal, as the case may be , may on the application of either party filed before the submission of the award revoke the order that the case shall proceed ex-parte , if it is satisfied that the absence of the party was on justifiable grounds.

10. The Labour Court, Tribunal or National Tribunal, as the case may be, shall submit its award to the Central Government within one month from the date of oral hearing /arguments or within the period mentioned in the order of reference whichever is earlier.

On the basis of contents of written arguments Ld. A/R for the workman orally stressed as follows:-

1. That work of workman /claimant was clerical as per profile of workman/claimant.
2. That workman/claimant achieved target of 70% even then management of HSBC directed to workman/ claimant to improve his performance.

Such performance of poor workman can not be assessed below the required performance of workman /claimant. Specially in want of oral evidence and documentary evidence of management on record to show other workman namelyhave already been terminated by management of HSBC on such an date on the basis of 70% or more performance.

Moreover workman/claimant was transferred from Lucknow to Delhi on 8.10.2008 for his harassment alongwith his family member prior to his malafide termination dated 22.05.2009. Which is apparent from contents of para 4 of E-Mail of management of HSBC – Ext, WW1/6.

It is relevant to mention here that there is distance of about 600 Km from Lucknow to Delhi. Wherein he has to arrange rented house etc to survive alongwith his family member in Delhi. Which is one of the Metro City and he cannot leave his rented accommodation occupied by his family members in Lucknow.

So he was dragged to incur double expenses to meet out arrangement for him and his family members in two big cities of India within his limited amount of monthly wage.

Such mischievous conduct of management of HSBC comes within the purview of unfair Labour practice.

Which is prohibited by provisions of S. 25-T of Id. Act 1947 since 21.08.1984 S.25-T provides that “No employer shall commit any unfair Labour Practice.

S.25-U of ID.Act, 1947 provides penalty for committing unfair Labour practices as follows:-

Any person who commits any unfair labour practice shall be punishable with imprisonment for a term which may extend to six months or with five which may extend to one thousand rupees or with both.

Although management of HSBC tried to show required compliance before termination of workman/claimant as follows:-

1. That management of HSBC paid 3 months salary to workman/claimant Sh. Chetan Kandpal in lieu of the termination .
2. Management of HSBC has paid Rs.98,000 by way of compensation in-compliance of section 25-F ID, 1947 .

Ld. A/R for the management thereafter stressed that only remedy to workman/claimant Sh. Chetan Kandpal.

Aforesaid contentions raised on behalf of management of HSBC is of no avail to management of HSBC.

I the light of aforesaid facts which makes it crystal clear that management of HSBC while illegally transferring the workman from Lucknow to Delhi on 8.10.2008 and subsequently malafidely terminate the services of workman /claimant Sh. Chetan Kandpal on 22.05.2009 committed unfair labour practice as provided u/s 25-T of ID. Act, 1947/

Moreover principles laid down in cited rulings on behalf of management are not applicable due to distinguishable facts. While principles laid down in cited rulings on behalf of workman applies with full force in the instant case.

My issue wise findings are as follow:-

Findings on issue no. 1:- Burden to prove issue no. 1 lies on management of HSBC but there is no evidence of management of HSBC which can show that claimant is not workman within meaning of section 2(s) of ID. Act, 1947

Inwant of evidence of management on aforesaid issue No. 1 is liable to be decided against management of HSBC and in favour of workman. Which is accordingly decided.

Findings on issue No. 2

Burden to prove issue No. 2 lies on management of HSBC . So management of HSBC was bound to prove whether termination of services of claimant Sh. Chetan Kandpal vide order dated 22.5.2009 amounts to retrenchment as defined section 2(oo) of the Act? If yes its fact.

But evidence of management HSBC not at all required reliable and credible to conclude that workman was retrenched instead of his termination by management of HSBC.

In these background issue no. 2 is liable to be decided against management HSBC and in favour of workman .

Which is accordingly decided.

Issue no. 3 & 4 have been framed by my Ld. Predecessor on the basis of question of determination mentioned in schedule of reference.

So following question of determination no. 1 is as follows:-

“Whether the action of the management of Hongkong & Sanghal Banking Corporation (HSBC) Ltd., New Delhi in terminating the services of Shri Chetan Kandpal , Ex-Relationship Manager, Consumer Finance w.e.f 22.05.2009, legal and justified?”

This question of determination no. 1 has been made issue no. 3 by my Ld. Predecessor .

It is relevant to mention here that burden to prove this issue lies on management of HSBC but management of HSBC has not discharged its burden to prove this issue through its required reliable and credible evidence

While workman proved unfair labour practice adopted by management of HSBC in terminating his service w.e.f. 22.05.2009 .

In this background issue no. 3 is liable to be decided against management and in favour of workman which is accordingly decided.

Finding on issue no. 4:

It is relating to relief to the workman.

To provide relief to workman. It is relevant to mention here that management of HSBC utterly failed to discharge its burden to prove issue no. 1 to 3.

Hence I have already decided issue no. 1 to 3 against management of HSBC and in favour of workman.

So issue no 4 , which is relating to relief to workman. It is also liable to be decided in favour of workman and against management of HSBC. Which is accordingly decided.

Therefore workman Sh. Chetan Kandpal is entitled to relief to reinstate with full back wages.

Reference is liable to be decided in favour of workman Sh. Chetan Kandpal and against management of HSBC. Claim statement is allowed with direction to management of HSBC to reinstate the workman Sh. Chetan Kandpal w.e.f. 22.5.2009 alongwith his back wages and consequential benefits within 2 months after expiry of period of available remedy against this award.

Award is accordingly passed.

Dated : 14.06.2017

HARBANSHP KUMAR SAXENA, Presiding Officer

नई दिल्ली, 10 अगस्त, 2017

का.आ. 1906.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स फैसिलिटी मैनेजमेंट सर्विस प्राइवेट लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण एवं श्रम न्यायालय नं. I, दिल्ली के पंचाट (संदर्भ संख्या 52/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.08.2017 को प्राप्त हुआ था।

[सं. एल-41012/70/2016-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 10th August, 2017

S.O. 1906.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 52/2017) of the Central Government Industrial Tribunal-cum-Labour Court No. I, Delhi as shown in the Annexure, in the industrial dispute between the management of M/s. Facility Management Service Pvt. Ltd. and their workmen, received by the Central Government on 10.08.2017.

[No. L-41012/70/2016-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI ID No. 52/2017

Shri Rakesh Kumar S/o Shri Murari Lal,
C/o Karamkar Ekta Kendra (Regd.),
A-704, Transit Camp, Rajiv Gandhi Colony,
Govindpuri, Kalkaji,
New Delhi – 110 019

...Workman

Versus

1. M/s Facility Management Services Pvt. Ltd.,
420, Kakrola Housing Complex,
Kakrola More, Dwarka
New Delhi – 110 078
2. The Container Corporation of India Limited,
Concor Bhawan, C-3, Mathura Road,
Opposite Apollo Hospital,
New Delhi – 110 076

...Management

AWARD

In the present case, a reference was received from the appropriate Government vide letter No.L-41012/70/2016-IR(B-I) dated 08.02.2017 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

“Whether the action of the management of M/s Prince Facility Management Services Pvt. Ltd. and Container Corporation of India Ltd. Tughlakabad, New Delhi in terminating the services of Shri Rakesh S/o Shri Murari Lal, Safai Karamchari with effect from 11.06.2012 is legal and just? If not, then what relief the said workman is entitled to ?

2. In the reference order, the appropriate Government commanded the party/ies raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Shri Rakesh opted not to file his claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the workman as well as the managements. Neither the postal article sent to the claimant, referred above, was received back nor was it observed by the Tribunal that postal services remained affected in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a ‘No Dispute/Claim’ award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : July 20, 2017

A.C. DOGRA, Presiding Officer

नई दिल्ली, 10 अगस्त, 2017

का.आ. 1907.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पूर्व रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 01/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.08.2017 को प्राप्त हुआ था।

[सं. एल-41012/49/2013-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 10th August, 2017

S.O. 1907.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 01/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the management of Eastern Railway and their workmen, received by the Central Government on 10.08.2017.

[No. L-41012/49/2013-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 01 of 2014

[Ministry's Order No. L-41012/49/2013-IR(B-I) dated 11.12.2013]

Parties:

Employers in relation to the management of

Eastern Railway

AND

Their workmen

Present: Justice Surendra Vikram Singh Rathore, Presiding Officer (Link Officer)

Appearance:

On behalf of the Management : Mr. Kamal Kumar Das, Ld. Counsel with Mr. Anirban Dutta, Ld. Counsel.

On behalf of the Workmen : Mr. R.N. Majumder, Ld. Counsel with Mr. B.K. Singh, Ld. Counsel, Mr. S.K. Singh, Ld. Counsel, Mr. N. Chakraborty, Ld. Counsel and Mr. D.K. Chakraborty, Ld. Counsel.

State : West Bengal

Industry : Railways

Dated: 14th July, 2017**AWARD**

This reference has been made by the Central Government in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947. As per schedule, the following question has been referred to this Tribunal:-

“Whether action of Controller of Stores, Eastern Railway in rejecting the demand of the workmen (Sri Bikash Ghosh and 457 others as per Annexure) who were the Contractor’s Labourer under the Deputy Controller of Stores, Eastern Railway w.e.f. 6.4.1983 is legal and/or justified? If not, what relief the workmen concerned are entitled to?”

2. Notices were issued to the parties and both parties have filed their pleadings. In the statement of claim filed on behalf of the workmen it has been pleaded that the workmen were contractor’s labourers supplied by the contractor M/s. R.M. Bhakat and R.K. Das to perform loading and unloading job at Belur Scarpayard under the control of the Deputy Controller of Stores, Eastern Railway, Liluah. After abolition of contract labour system, contractor’s labourers became entitled for absorption in Group D posts in the Eastern Railway. For the said purpose these contractor’s labourers formed a labour cooperative society in the name of Liluah-Belur Contract and Construction Society Limited (hereinafter referred as society) which was registered on 1st September, 1983. Biswanath Singh Roy is the Secretary of the said society. The dispute arose after the abolition of such contract labour system in determining the relationship between the railway administration and the contractor’s labourers who actually worked in the Railways. After a prolonged litigation at different forum before Central Administrative Tribunal - Kolkata, High Court - Calcutta and also before the Hon’ble Supreme Court it has been held by the courts that the abolition of contract system was valid and the moment the contract stands abolished, the relationship between the railway administration and the labourers is created as employer and employee.

It has also been pleaded in the statement of claim that this issue has been settled by the Hon’ble Supreme Court in the year 1997. In compliance of the Court’s orders a screening committee was constituted which considered the case of 458 labourers who have filed their bio-data but without informing them about the sitting of the screening committee, the screening committee rejected their claim. The said report of the screening committee is arbitrary, biased and against the principles of natural justice.

In the statement of claim detailed background of the legal battle of these workmen has been narrated which shall be considered in the later part of the judgment. As per the statement of claim the workmen have rendered service as contractor’s labourers through various contractors for a period varying from 1 to 15 years before the abolition of the contract labour system with effect from 6th August, 1983 (date of termination of contract) and the Hon’ble Supreme Court has settled the principle that after abolition of contract labour system, relationship between the administration and the workman is established and the workman accrued a right to be absorbed in the regular service and as such the action and activities of the railway authorities is violative of Article 14 and 16 of the Constitution of India. The right accrued to the workman for their absorption in Group D posts cannot be denied directly or indirectly by introducing a system which was abolished in the year 1983. For recruitment to the Group D employees applications were invited and the workmen were deprived of their right for claim of absorption and such act of inviting applications by the railways was malafide and discriminatory on the face of record. In the screening 239 workmen who were found fit for absorption, the railway authority did not take any step for their absorption, as such, the whole action of the opposite party was malafide and colourable exercise of official power. The action of the railways in recruiting the Group D employees by outsourcing and thereby depriving the workmen of their right is violative of Article 21 and 39 of the Constitution of India. Inspite of successive and repeated decisions of the Hon’ble Supreme Court and the Hon’ble High Court at Calcutta, authorities have not taken any steps for absorbing these workmen. The opposite parties have absorbed some other contract labourers in the Eastern Railway but did not take any step for absorption of the present workmen which is a clear action of discrimination and arbitrariness. The railways disobeyed the Hon’ble Courts as well as the orders of His Excellency Hon’ble the President of India. A prayer has been made on behalf of the workmen that

direction be issued to the railway authorities to absorb the workmen from the applicants who were before the Hon'ble High Court and the Hon'ble Supreme Court in suitable Group D posts in the Eastern Railway after compliance of the necessary procedure as early as possible as the workmen are suffering for the last 31 years.

3. In the written statement filed on behalf of the Eastern Railway it has been pleaded that the Eastern Railway entered into a contract with M/s. R.M. Bhakat and R.K. Das on 1st May, 1980 for clearance of heavy accumulation of scrap materials in Liluah Stores Depot premises. Said contract was initially for a period of 2 years but it was subsequently extended for another 2 years up to 7th April, 1984. Though the said contract was extended till 1984 but due to gross irregularities of working on the part of the contractor leading to a chaotic situation the railways were constrained to terminate the contract on 6th August, 1983. Subsequently, the railways had deployed their departmental staff for completing the balance incomplete work of the contractor and had removed the accumulated scrap from the stores. Therefore there was no need to enter into any other contract. In the written statement also, details of the long history of the past litigation has been mentioned which shall be considered in the later part of this judgment. It is submitted that after the termination of the contract on 6th August, 1983 no industrial dispute was raised and it has been raised after a long gap. It has also been stated that after termination of the contract with M/s. R.M. Bhakat and R.K. Das railways did not enter into any contract for the said job and the railways departmental staff was engaged to remove the accumulated scrap. It has also been pleaded that no court of law has ever passed any direction for absorption of the claimants in the railway service. Railway is having its own policy for recruitment to Group D posts through railway recruitment cell, therefore, the question of absorbing the claimants, bye passing the said prescribed procedure does not arise. Regarding the plea of the workmen that the direction of His Excellency the President of India was not complied with, it has been pleaded that normally Secretariat of the Hon'ble the President of India forward such applications to the concerned Ministry for necessary action in routine manner without going into the merit of such application. As such the society was replied by the Railway Board. The railway administration constituted a screening committee which scrutinized the case of the petitioners and rejected the same as their claims were devoid of merit. It has also been pleaded that the courts never passed any direction for absorption of the petitioners in railway service. At every stage of the litigation pertaining to the present dispute, matter of absorption of the contract labourers was left to the discretion and consideration of the railway administration. The workmen, through series of litigation, are reiterating their stale claim of absorption in the railway service but every effort ended in failure. It has also been denied that the decision of the railway in not absorbing these workmen does not violate any constitutional provision. The railways had given reasonable opportunity to the labourers to establish their claim with documents in support thereof but the labourers have utterly failed to do so. Vide memorandum dated 18th January, 2013 the labourers were informed that their claim has been denied by the screening committee. It has also been pleaded that denial of giving employment to the self-claimed contractor labourers after lapse of so many years has no bearing with civil consequences, rather if such employment is given to them then it will amount to depriving unemployed eligible persons who are eligible to be considered at the time of absorption.

Thus the case, in brief, of the railways is that the job contract was given to do the work of clearing of accumulated scrap materials to M/s. R.M. Bhakat and R.K. Das and the contract was terminated on 06.08.1983. The Contract Labour (Regulation and Abolition) Act, 1970 does not provide for automatic creation of relationship of employer – employee between the establishment and the contract labourers. It has also been pleaded that the Calcutta High Court had directed to file individual claims before the Industrial Tribunal but workmen have violated the said direction by filing their claim in a representative capacity. Being against the direction of the Hon'ble Calcutta High Court, such claim deserves to be dismissed on this ground alone.

4. In the rejoinder same facts have been reiterated by the society of workmen.

5. Before proceeding in the matter, it is necessary to give brief note of the past litigation and the directions/orders passed in those cases.

Before starting litigation between the society and the Eastern Railway, the contractors M/s. R.M. Bhakat and R.K. Das filed a writ petition before the Hon'ble High Court at Calcutta challenging the termination of the contract by the railway administration. Hon'ble Calcutta High Court vide its judgment dated 28th June, 1985 dismissed the said writ petition holding that the order of termination of contract has been passed after giving due notice dated 13th May, 1983 and accordingly the writ petition was dismissed.

The litigation between these parties started by filing Original Application No. 528 of 1987 with MA 388 of 1995 before the Central Administrative Tribunal, Calcutta Bench. Vide order dated 08.10.1996 a direction was given to the respondent to appoint a screening committee to screen the applicants, who had worked under the Controller of Stores, the respondent No. 3 and to engage as many of them as is feasible as their direct employees in suitable Group-D posts. The connected MA 388 of 1995 which was filed for an interim order that no appointment/engagement should be made or given to any person other than members of the Cooperative Society till disposal of the O.A. was also disposed of as the case was finally disposed of. Thereafter a Civil Appeal bearing No. 1358 of 1986 was preferred before the Hon'ble Apex Court. The Hon'ble Court by order dated 03.04.1997 passed the following order:

“The Central Administrative Tribunal has correctly held that it has no jurisdiction to entertain the application filed on behalf of a Railway contractor’s labour since the contractor’s labour cannot be considered as employed by the Railways. The Eastern Railways, however, in the affidavit filed on its behalf by Shri B. Maji, Chief Mechanical Engineer (Planning) Eastern Railway, Calcutta dated 13th of April, 1993 has offered, on humanitarian grounds, that the contractor’s labourers can form their co-operative societies and participate in handling and other contracts issued by the Railways from time to time and co-operative societies thus formed may avail of the benefits as laid down in the Railway Board’s letter No. 72/E/Co-op./L/1/5 dated 21.9.1973 as modified from time to time. The appellants/ petitioners state that they will accept the scheme. It is directed accordingly. The appellants/petitioners have also contended that whenever possible, the labourers employed by the contractors should be absorbed by the concerned Railway and as and when any vacancy arises and the turn of such labourers comes. In some of the matter which are before us, the concerned Railway authority has, in fact, absorbed some of the contractors’ labourers rendered surplus in the vacancies which were available with them. It will be for the concerned Railway to take such measures as they may consider appropriate in this regard.

The civil appeals, writ petitions and the special leave petitions are disposed of accordingly.”

S.L.P. (C) Nos. 3740-41/97 :

Heard both sides. For the reasons stated above, leave is granted, the impugned order of the Tribunal is set aside and the appeal is allowed in the same terms.

Since the directions were not complied with, so another Writ Petition No. 4713 of 2011, MAT No. 881 of 2011 with CAN 5670 of 2011 were preferred and vide order dated 21st July, 2011 following directions were issued by the Hon’ble Calcutta High Court:

“The respondent authorities are directed to consider the claim of the appellants regarding absorption of the contract labourers engaged by the appellant No. 1 strictly in terms of the judgment and order dated 18th November, 2009 passed by the Hon’ble Supreme Court in Writ Petition being Civil Appeal No. 640 of 2007 without any further delay but positively within a period of four months from the date of communication of this order.”

Thereafter a review application was filed by the railways against the aforesaid order but the said review application was dismissed and in the contempt application time was granted to the allege contemnors to take necessary steps to implement the direction given in the 21st July, 2011 order.

This said order was again challenged before the Hon’ble Apex Court in SLP (Civil) CC 14737-14738 of 2012 by the railways and vide order dated 14th September, 2012 the Hon’ble Apex Court passed the following order:

“Learned counsel for the respondents have agreed that the matter may be disposed of by issuing a direction to the present petitioner to consider the case of regularization of all the persons who before the High Court or implement the directions issued by the High Court giving liberty to the petitioner to decide the case in accordance with law without making reference to any particular judgment of this Court. As the matter remained pending before the Courts for a long time, the petitioner may consider the grievance expeditiously preferably within a period of four months.”

Since in the earlier judgment the Hon’ble Calcutta High Court had directed to comply with the directions given by the Hon’ble Apex Court in Writ Petition No. 640 of 2007, therefore, to this extent the earlier order was modified and it was directed that the claim of the claimants be considered in accordance with law without making reference to any particular judgment of the Hon’ble Apex Court.

After report of the screening committee again Writ Petition No. 3808 of 2013 was filed and vide judgment dated 25th February, 2013 Hon’ble Calcutta High Court has given the following direction:

“Under the circumstances, this Court is firmly of the view that the Committee has strictly followed the Judgment of the Hon’ble Supreme Court of India but, even now, if the petitioners still claim perversity or claim that their cases have not been properly dealt with, then their remedy, if any, lies not before this Court but before the industrial adjudicatory machinery. Therefore, they may invoke the provisions of the Industrial Disputes Act in accordance with law, provided, they are able to make out sufficient grounds for doing so.

This Writ Petition, according to this Court, is therefore not maintainable. It is, accordingly, dismissed by giving liberty to the petitioners to invoke the jurisdiction of the Industrial Tribunal.

It goes without saying that if the petitioners approach the Industrial Adjudicator, then such Petition must be filed by the concerned workmen individually and not by the Society so as to make it convenient for the Industrial Adjudicator to independently evaluate the merits of each case.

It goes without saying that if such application or applications are filed, then the concerned Authority under the Industrial Disputes Act must dispose it of with utmost expedition at their disposal.”

The direction given by the Hon’ble Calcutta High Court in this judgment has been pleaded as a ground to dismiss the reference as the direction given in this judgment to file individual cases has not been complied with by the workmen.

Lastly, Writ Petition(S) (Civil) No(s). 869 of 2016 was filed by Biswanath Singha Ray and others against Union of India. During the course of argument the Ld. Counsels for the parties were asked as to what was the prayer in the aforementioned writ petition. Ld. Counsel for the workmen failed to inform the Tribunal as he was not aware of the actual prayer in the said writ petition. However, Ld. Counsel for the Eastern Railway informed the Tribunal that the said writ petition was filed with the prayer for absorption of the workmen. The said writ petition was dismissed by the Hon’ble Apex Court vide order dated 11.11.2016 holding that the writ petition was wholly misconceived. However, a direction was given to this Tribunal to dispose of this reference case on or before 31st May, 2017.

6. After going through the pleadings of both the parties it is clear that the contractor’s labourers are litigating before different forums for the last about 30 years as they have filed their first O.A. in the year 1987 before the Central Administrative Tribunal. The main claim of the workmen is that by virtue of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred as CLRA Act) the workmen who were working at the time of abolition of the contract labour system automatically became workmen of the principal employer and relationship of employer and employee was created. In support of its claim on behalf of the workmen affidavits of examination in chief of 187 witnesses were filed but they have produced only following witnesses for cross-examination:

- WW-01 Shri Biswanath Singha Roy
- WW-02 Jaydeb Bhowmick
- WW-03 Kartick Chandra Patra
- WW-04 Nakul Chandra Das
- WW-05 Arun Sukumar Boral
- WW-06 Jawharlal Bhowmick
- WW-07 Sanat Makhal

On behalf of the management affidavit of evidence of Shri Surajit Kundu has been filed.

7. Two judgments of the Hon’ble Apex Court have been mentioned in the statement of claim in support of their absorption as regular employees of the railways. The first judgment is in Writ Petition No. (C) 640 of 2007 which was in the case of Howrah Parcel (EAS. Rly.) L.C.M. Panch & Ors. V. Union of India & Ors. In that case vide judgment dated 17th November, 2009 the Hon’ble Apex Court had directed as under:

“10. In that view of the matter, as far as the writ petitioners are concerned, we allow the writ petitions and direct that in terms of the directions given in the case of A.I. Railway Parcel & Goods Porters’ Union (supra), the respondents shall take immediate steps to absorb the writ petitioners but taking into consideration only those conditions which have been indicated in paragraph 34 of the judgment. Such exercise should be completed within three months from the date of communication of this order.”

Another judgment on which reliance has been placed in the statement of claim is the pronouncement of the Hon’ble Apex Court reported in AIR 1997 SC 645. This was the case of Air India Statutory Corporation etc. v. Union of India Ors. Wherein the Hon’ble Apex Court has held that on abolition of the contract labour system from any establishment under Section 10 CLRA Act by the appropriate Government, the logical and legitimate consequence thereof will be that the erstwhile regulated contract labour covered by such abolition for the concerned activities would be entitled to be treated as direct employees of the employer on whose establishment they were earlier working and they would be entitled to be treated as regular employees at least from the day on which the contract labour system in the establishment for the work which they were doing gets abolished. It is pertinent to mention here that in the fact of the present case no notification under section 10 of the CLRA Act is on record.

8. Mr. R.N. Majumder, Ld. Counsel for the workmen has argued that the contract was a sham contract which was entered into by the railways to avoid the liability of regular appointment. In support of his submission he has drawn the attention of this Tribunal towards some contents of the terms of contract wherein the work assigned to the contractor has been mentioned. On the basis of the said assigned work it has been argued that the said work was of perennial nature, therefore, it was a sham and bogus contract. It has also been argued that the payment of wages was made by the railways. Apart from it the provisions of CLRA Act which provide for maintaining the record have not been followed. He has also argued that in this case notification of Section 10 prohibiting contract labour system has not been placed on

record by the railways. Apart from it there is no evidence that the contractor with whom the railways claims to have entered into contract was having license to employ contract labourers. Thus, being a Government undertaking it was expected from the railways to follow the provisions of law but the same has not been done and the natural consequence of the same would be that the workmen ought to be treated as employees of the railways. He has also argued that the case of Uma Devi for regularization/absorption of the workmen shall have no application on the Industrial Tribunals or the industrial authorities. He has also argued that it was provided in the agreement that the payment of wages shall be made in accordance with the statutory provisions and to ensure the payment of wages it was to be made under the supervision of the railway representative. Apart from it, the work which was to be done by the contractor was continuously to be supervised and was to be done under the control of the railway authorities. Therefore, these workmen who were working under the immediate and effective control of the railway authority ought to have been treated as regular employees of the railways. He has also argued that each workman has completed more than 240 days work in the preceding 12 months and in this case the mandatory provisions of Section 25F of the Industrial Disputes Act, 1947 have not been followed which would make the retrenchment void ab-initio. He has also argued that this Tribunal is confined with the terms of reference. However, the matters incidental thereto can also be looked into. He has drawn the attention of the Tribunal towards the date of termination of job of the workmen which is mentioned as 06.04.1983 in the reference. It is submitted that the contract which was entered into for a period of 2 years was further extended vide letter dated 6th April, 1982 for a further period of 2 years but on 6th August, 1983 it was terminated. He has submitted that in the said termination letter there is mention of notice dated 18th May, 1983 but no such notice has been filed on behalf of the railway which shows that without giving any notice services of the workmen were terminated. Thus the sum and substance of the argument of the Ld. Counsel for the workmen is that the contract was sham. There was relationship of employer and employee between the railways and the workmen. Therefore, their services could not have been terminated by issuing a letter and without following due procedure. Therefore, the workmen are entitled to be absorbed and rejection of their prayer by the screening committee was unfair. The services of the workmen were terminated by adopting unfair labour practice. Ld. Counsel for the workmen has laid great emphasis on the point that the workmen were actually in the service of the railways as the contract was sham. Since there was no compliance of the provisions of Section 25F of the Industrial Disputes Act, 1947 therefore, their termination was void ab initio and they ought to be treated to be in service of the railways.

9. On behalf of Eastern Railway, Ld. Counsel has argued that there was no relationship of employer and employee between the Eastern Railway and the workmen. The contract was given to the contractor for specific purpose for clearing of accumulated scrap materials. These workmen were contractor's labourers who were engaged by the contractor to perform the said work. The said contract was terminated and the order of termination of contract has been upheld by the Hon'ble Calcutta High Court. He has also argued that at that point of time none of the workmen raised any dispute before any authority of the railways. It was for the first time in the year 1987 such a challenge was made by filing original application before the Central Administrative Tribunal. It is also argued that in the statement of claim the prayer of these workmen was only for their absorption in the railways. There was no prayer for regularization which means that employer and employee relationship was not in existence at all and for the reasons mentioned in the statement of claim the workmen have prayed for their absorption only. The claim of these workmen that the contract was sham has no legs to stand because no such stand was taken in the statement of claim and for the first time this ground was raised in the affidavit of evidence. He has also argued that as per the reference the only point to be considered is whether the report of the screening committee suffers from any illegality/perversity and on this ground no evidence has been led by the society. He has also argued that even in the schedule of reference these workmen have been referred as contractor's labourers and not contract labourers of the railways.

10. At this juncture I would like to consider the evidence led by the rival parties. As stated earlier, affidavit of evidence of 187 witnesses were filed. However, only 7 out of them have been produced for cross-examination. Perusal of the affidavit of evidence clearly shows that all the affidavits are verbatim in its content. There is no difference in the said affidavits.

WW-01, Biswanath Singha Roy has stated in his affidavit of evidence that he was engaged by M/s. R.M. Bhagat and R.K. Das, contractors to perform loading and unloading work at Belur Scrapyard, Liluah under Deputy Controller of Stores, Eastern Railway. After abolition of such contract labour system they were entitled to be directly absorbed in the railways but that was not done. The contract which was entered into between M/s. R.M. Bhagat and R.K. Das was sham contract in view of the fact that the railways used to pay remuneration to him and to other similarly situated employees at the rate specified and the contractor was entitled to a certain percentage for supplying the labourers to the railways. The witness has also given the brief details of the past litigations and has also stated that surprisingly on 18th January, 2013 the Chief Personnel Officer, Eastern Railway communicated a letter to the Secretary whereby the said Chief Personnel Officer was pleased to reject the prayer for absorption of the members of the society on the basis of whimsical and arbitrary screening of the members of the society. This witness has also attached a certificate issued by M/s. R.M. Bhagat and R.K. Das dated 1st May, 1980 whereby the contractor has given a certificate that his performance as labour supervisor was satisfactory and he bears a good moral character. In his cross-examination he has stated that

Liluah Belur Co-operative Labour Contract and Construction Society Ltd. Was registered on 1st September, 1983 and there was no agreement between the said cooperative society and the railway administration. He worked under the said contractor till 9th March, 1983 and on the said date the contractor terminated him from service. He challenged the said order of termination of the contractor before the Hon'ble High Court and the Hon'ble High Court passed an order directing the contractor to give him day-to-day work but the said order was not complied with by the contractor. No contempt application was filed against the contractor for not complying with the order of the Hon'ble High Court.

Second witness who was produced for cross-examination is Jaydeb Bhowmick. His examination in chief, as stated earlier, is exactly the same. This witness has stated in his cross-examination that he knows Ranjit Das and Ranmangal Bhagat. They were their contractor. He does not remember the date on which he joined the company. No appointment letter was issued to him by the said company. This witness has stated that whatever has been done, is done by Biswanath Singha Roy. He has not filed any document and he is deposing for himself and not for others. He has admitted that there is minimum qualification for joining Group-D service in the railways. He has also stated that he has no information that his application was rejected because he had no minimum qualification and has also stated that his age was more than the maximum age prescribed for Group-D posts. There was no relationship with the railways as he was engaged by the contractor. He has also stated that "if such a statement that I used to receive my salary from the railways is written in the examination in chief, that is not correct". He also admitted that the cooperative society was formed after he left the job of the contractor.

The next witness produced for cross-examination was Kartick Chandra Patra. He has stated in his cross-examination that he was working in the railways and was engaged by the railways and not by the contractor. If anything contrary is written in the affidavit that is wrong. He was given service by one Nemai Das and he worked continuously thereafter. He has also admitted that he does not possess minimum qualification and age prescribed for Group-D posts in the railways. He has also stated that he knows the contractor M/s. R.M. Bhagat and R.K. Das who used to come to the place. He has stated that he was engaged by M/s. R.M. Bhagat and R.K. Das. When his contradictory statement given in examination in chief and his cross-examination were put to the witness, the witness stated that his earlier statement is correct and his statement in affidavit is incorrect.

Next witness produced for cross-examination was Nakul Chandra Das. This witness has stated in his cross-examination that he was not engaged by R.M. Bhagat and R.K. Das. Any statement to the contrary is wrong. He was working for the railways. He does not have any appointment letter issued by the railways. He worked up to 1983 and the railway authorities told him that there was no work for him and thus he was retrenched. He has also stated that he has not filed any application to the railways for absorption. The cooperative society is in existence and he is a member of the said cooperative society.

The next witness produced was Arun Sukumar Boral. He has stated in his cross-examination that he joined the contractor in the year 1977. Railwayman used to pay him wages. However, he admitted that he does not have any document to show that the railwayman paid him wages. No appointment letter was issued to him. He has further stated that he is not a member of the society and does not know what is written in his affidavit as it is written in English. As per the year of birth disclosed by this witness, he was only 16 years of age on the date on which he claims to have been engaged.

Next witness produced was Jawharlal Bhowmick. He has stated in his cross-examination that he joined the said contractor in the year 1977 and worked with him for 5 years. He asked for the identity card which was not given. He was not allowed to join. No appointment letter was issued to him by the contractor. He used to get monthly wages from the railwayman and he does not have any document showing that the wages were paid by the railwayman. He expressed his ignorance about the existence of any contract between the contractor and the railways.

The next witness produced was Sanat Makhral. He has stated in his cross-examination that in the year 1975 he was working in the railways under contractor. Before working in the railways he used to sell coconuts. The contractor asked him whether he intends to work and when he agreed, he was given the job. He has also expressed his ignorance about the existence of any agreement between R.M. Bhagat and R.K. Das. He used to work with the railways and his work was of loading and unloading.

11. On behalf of the railways affidavit of evidence of Shri Surajit Kundu has been filed which is in question and answer form. He has stated that the agreement was entered into by Eastern Railway with M/s. R.M. Bhakat and R.K. Das for clearance of heavy accumulation of scrap materials in Liluah Stores Depot on 1st May, 1980. Eastern Railway never engaged the petitioners and did not pay any wages to them for performing loading and unloading work. Railways had only entered into a contract with contractor M/s. R.M. Bhakat and R.K. Das for loading/unloading of scrap materials. Since the contract was entered into with the contractor only, so the payment was made by the contractor to the workmen. Representative of railway used to remain present at the time of payment of wages only to see that the contractor was not depriving the poor workmen. Railway never issued any identity card to any person other than its own employees. The petitioners were at no point of time were the employees of the railway. There never existed master

— servant relationship. The contract with M/s. R.M. Bhakat and R.K. Das was for clearance of heavy accumulation of scrap materials and it was only for a period of 2 years which was subsequently extended for a further period of 2 years. Due to gross irregularities in performing the work, the said contract was terminated on 6th August, 1983. The petitioners were never engaged by the railway. The railway entered into contract with the contractor only to perform the specified job and the contractor had engaged its labour to complete the said job. After termination of the contract, the departmental staff was deployed to complete the balance incomplete work of the contractor. The petitioners never moved any court in individual capacity for their absorption. In compliance of the directions of the Court a screening committee was constituted which had scrutinized 664 applications and submitted its report. On perusing the above applications and the report the claim of the petitioners was found devoid of merit and accordingly the same was rejected. The said memorandum was communicated to the society forthwith. He has stated that he has been authorized by his Controller of Stores to depose in this case and expressed his ignorance about the fact, whether the contractor M/s. R.M. Bhakat and R.K. Das had obtained license for labour contract. He has also added that in the agreement it was mentioned that the contractor should obtain license within a period otherwise the contract would be terminated. The contract was not terminated for want of license. Regarding the nature of contract, this witness has stated that the contractor who was given the contract of clearing the scrap from Belur Scrapyard was supposed to engage labourers to do the work and has also stated that the work of removal of accumulated scrap is not perennial in nature. Payment was made to the contractor by the railway. He has also expressed ignorance about the fact that whether his establishment is registered under the Contract Labour (Regulation and Abolition) Act. He has also stated that there was a supervisor to supervise the payment to the labourers of the contractor. He has also stated that the payment of wages shall be made under the supervision of the railway person was a part of contract contained in paragraph 72 and 73 of the contract. He has expressed his ignorance on the point that in case the principal employer is not registered under the Contract Labour (Regulation and Abolition) Act, such contract cannot be entered into. He has also stated that he has not mentioned in his written statement as to how the contractor was selected in the matter. Right now he cannot say about the procedure followed in the case as it was a very old case. He has denied the suggestion by saying that it is incorrect to say that taking advantage of the pity condition of the workmen, they were not taken on the rolls of the railway. He has denied the suggestion that there were vacancies and second contract was entered into by the railway.

12. Great emphasis has been laid by the Ld. Counsel for the Eastern Railway for rejecting the claim of the workmen on some technical grounds which are being considered at this stage.

13. First ground is of delay in taking steps for this reference. Termination of contract had taken place in the year 1983 and the reference has been filed in the year 2014 i.e., after more than 30 years. Law is settled on the point that even if no period of limitation is provided under law even then the action must be taken within a reasonable time. There cannot be two opinion that reference is excessively delayed which has rendered the claim stale but keeping in mind the fact that the society is contesting the legal battle for such a long time, I do not consider it appropriate, in the peculiar facts of this case, to dismiss the claim on this technical ground. After such long legal battle workmen deserves to get their case decided on merits.

14. The second ground raised was that the workmen have not complied with the direction of the Hon'ble Calcutta High Court and have not filed individual applications. It is true that the workmen have come before this Tribunal in a representative manner through their society and have not preferred individual applications. But as stated earlier, dismissal on this technical ground would not be appropriate in view of the long legal battle.

15. Keeping in view the dispute involved in this case, it becomes absolutely important to consider the relationship between the workmen and railways. Perusal of record of earlier litigation which is available on record clearly establish that the workmen at every stage of litigation have claimed themselves to be contractor's labourers. Even in the opening paragraph of their statement of claim they have stated that they were contractor's labourers and by virtue of abolition of contract labour system, they became the employees of the railways. It was nowhere pleaded in the statement of claim that the contract was sham. This ground has been taken for the first time in the affidavit of evidence. Here it is pertinent to mention that the Hon'ble Apex Court in Civil Appeal No. 1358 of 1987 which was between the same parties had observed in its judgment dated 03.04.1997 that "Central Administrative Tribunal has correctly held that it has no jurisdiction to entertain the application filed on behalf of a railway contractor's labour, **since the contractor's labour cannot be considered as employed by railways.**" This observation of the Hon'ble Apex Court clearly establishes that the case of the workmen was that they were contractor's labourers. This is the case of the management also that contract was given to the company for doing a specific job which was for the removal of the scrap materials in the Liluah workshop. It was only after more than 30 years the ground that the contract was sham has been taken so such a long delay in taking a stand is itself fatal. The main ground to show that contract was sham is that wages were paid by the railways. On this point MW-01 has stated that wages were paid under the supervision of railway representative only. It was so provided in the Contract itself (paragraph 72 and 73). Apart from it Section 21(2) of the Contract Labour Regulation and Abolition Act also provide for distribution of wages under supervision of principal employer's nominated representative. On this point WW-01 has stated that he has challenged his termination by contractor before

Hon'ble High Court and a direction was issued to the contractor to give him day to day work but the said order was not complied with. WW-02 has admitted that there was no relationship with the railways as he was engaged by the contractor. He has also denied that he used to get his wages from railways. WW-03 has stated that he was given service by one Nemai Das and he was not having minimum qualification to get the job in railways. He has stated that his statement in the affidavit is incorrect. WW-04, Nakul Chandra Das has stated that he was not given any appointment letter. Next witness WW-05, Arun Sukumar Boral has stated that he joined the contractor in 1977. Railway man used to pay him wages. He was less than 18 years of age when he claims to have joined the company. Next witness WW-06, Jawharlal Bhowmik has also stated that he joined contractor in the year 1977. He has also stated that wages were paid by railwaymen. Next witness, WW-07, Sanat Makhal has also stated that he was working in railways under contractor. Before that he used to sell coconuts. Contractor asked him to work, he agreed and he was given the job.

16. Thus the evidence of all the witnesses clearly establishes that they were contractor's labourer. Mere payment of wages under the supervision railwaymen cannot be a ground to hold that they were employees of the railways.

17. The next ground raised in support of their status is that they were working under the control of Controller of Stores as is mentioned in the schedule of reference. Here it is pertinent to mention that in the schedule of reference, these workmen have been referred as contractor's labourers. Control of Controller of Stores was only to the extent of getting the work done in a proper way. There is absolutely no evidence that Controller of Stores had any interference in the engagement of labourers or their termination. Who will work as labour under the said contract was exclusively within the domain of the contractor. Railways was not having any control regarding engagement of labourers. It is also clear by evidence of witness as one was engaged by Nemai Das and other was offered job while he was selling coconuts. So in the facts of this case the control of railways was only with regard to the proper execution of the work and nothing more. Therefore these workmen were contractor's labourers engaged by the contractor to execute the work assigned to do the job work given under a contract. So they cannot be treated to be employees of railways.

18. Entire emphasis of the Ld. Counsel for the workmen is on the ground that on lifting the veil it is clear that these contract labourers were actually the employees of the railways and in such background, their retrenchment without following the mandatory provisions of Section 25F of the Industrial Disputes Act, 1947 makes their retrenchment void *ab initio*. During the course of argument Ld. Counsel for the workman was asked to show whether such plea has been taken that the workmen were the employees of the railways or the contract was sham in their statement of claim. He was also enquired about the prayer of the workmen that they have prayed for absorption in the railways and not for regularization of their service. In reply to this query Ld. Counsel for the workmen has submitted that whatever may be stated in the statement of claim, it does not change the legal position. The case has to be decided in accordance with law. This Tribunal is not the least satisfied with this reply of the Ld. Counsel for the workmen because law has to be applied to a given set of facts. The facts have to be pleaded and established by the rival parties by their pleadings and evidence. Therefore, simply by saying that whatever may be stated in the pleading, would not affect their claim. Case law produced by the Ld. Counsel for workmen though reliance has been placed on some other point but in the said case of General Manager, O.N.G.C., Shilchar v. O.N.G.C. Contractual Workers Union, 2008 AIR SCW 3996 Hon'ble Apex Court in paragraph 18 has considered the pleadings in the matter and on the basis of the same has observed as to what was the core issue before the Tribunal. Thus the core issue has to be considered in the light of the pleading keeping in view the scope of reference. Ld. Counsel for the workman in support of his argument has placed reliance on the case of H.D. Singh v. Reserve Bank of India, AIR 1986 SC 132 wherein the contract labourers were held to be the employees of the principal employer and accordingly direction was issued. But the facts of that case were entirely different. The Tikka Mazdoors were engaged through contractor by the Reserve Bank of India and their work was to examine the coins. In that case there was no written order for terminating service of these Tikka Mazdoors. So the facts of that case were entirely different, because in the instant case job contract was given to the contractor and the workmen were working for the contractor. The major difference in the factual background is that the contract on the basis of which these workmen were working as contractor's labourers in the scrap yard of the railways was for a fixed period of two years which was further extended for two years but because of some reasons the same was terminated after giving notice with effect from 6th August, 1983.

19. At this stage, it is pertinent to mention that this order of termination of contract was challenged by the contractor by filing a writ petition and the same has been dismissed. Therefore, the workmen who are claiming themselves as the employees of the railways were working for a specific period. Even the date of termination of contract was specified. This is a major difference between the facts of the case law relied upon by the Ld. Counsel for the workmen which goes to the root of this case.

20. Reliance has also been placed on the pronouncement of the Hon'ble Apex Court in the case of Hussainbhai, Clicut v. The Alath Factory Thezhilall Union, AIR 1978 1470. The facts of that case were also completely different. In the facts of that case the contract labourers were engaged for making ropes. The factory in which they were engaged was a rope making factory. The machine for the said purpose, raw material for the said purpose were supplied by the factory and the goods so prepared by the workmen were sold by the factory. There was no contract prescribing the

period of engagement in the facts of that case, while in the facts of the present case these workmen were engaged for specific period. It makes the facts of this case entirely different. Because of the major difference in the facts situation the workmen are not entitled to get the benefit of this case law as the same do not apply in the present case.

21. Next point urged is that by virtue of contract labour abolition they automatically became employees of the railways. This point does not need a long discussion. Constitution Bench of the Hon'ble Apex Court in the case of Steel Authority of India & Others v. National Union of Waterfront Workers, AIR 2001 SC 527 has held as under:

“(3) Neither Section 10 of the CLRA Act nor any other provision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labour or issuing a notification by appropriate government under Sub-section (1) of S. 10 prohibiting employment of contract labour, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order absorption of the contract labour working in the concerned establishment.

(4) We overrule the judgment of this Court in Air India's case (supra) prospectively and declare that any direction issued by any industrial adjudicator/ any Court including High Court, for absorption of contract labour following the judgment in Air India's case (supra), shall hold good and that the same shall not be set aside, altered or modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final.”

This case is complete answer to this question whereby the Hon'ble Apex Court has overruled its earlier decision in the case of Air India, MANU/SC/0163/1997 The case which has been overruled by the Constitution Bench has been taken as a ground for absorption in the statement of claim filed on behalf of the workmen.

22. Ld. Counsel for the workmen has also argued that in the reference the date of termination of contract has been mentioned as 06.04.1983 which is not correct. It is only a typing error. Report, on the basis of which schedule was prepared carries the correct date. Actually this date is 6th August, 1983.

23. Ld. Counsel for the workman has also argued that in this case Railway and the contractor have not complied with the mandatory requirement of the provisions of the CLRA Act. Neither the contractor was licensed nor, the registers which are supposed to be maintained by the parties were maintained. But in my considered opinion, this argument does not render any help to the workmen because the Contract Labour Regulation and Abolition Act is a complete code in itself. Where the provisions are not complied with, the penal provisions will take care of that position, but it will not, in any manner, confer any right on the workmen for their absorption as regular employees of the railways. On this point reference may be made to the pronouncement of the Hon'ble Jharkhand High Court in the case of Usha Martin Limited (Usha Ishmal Division), Ranchi v. Dashrat Upadhyay, 2014 LLR 362 wherein Hon'ble High Court has observed as under:

“The C.L.R.A. Act regulates the conditions of service of the contract labour and authorizes in Section 10(1) of the Act the prohibition of contract labour system by the appropriate government on consideration of factors enumerated in Section 10(2) of the Act among other relevant factors. But, the presence of some or all those factors, provides no ground for absorption of contract labour on issuing notification under Section 10(1) of the Act. Admittedly, when the concept of automatic absorption of contract labour as a consequence of issuing notification under Section 10(1) by the appropriate Government, is not allowed to either in Section 10 or at any other place in the Act, the consequence of violation of Sections 7 & 12 of the C.L.R.A. Act is expressly provided in Section 23 and 25 of the C.L.R.A. Act. It is not for the High Courts or the Hon'ble Supreme Court to look into some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 of the Act or sequel to absorption of contract labour in the establishment of the principal employer or a lesser or a higher punishment.”

Reference may also be made to the pronouncement of Hon'ble Allahabad High Court in the case of Arvind Kumar Awasthy v. SBI, 2004 LLR 4. In paragraph 7 Hon'ble Court observed as under:

“7. Thus the controversy raised in the above noted petitions stands concluded against the petitioner by ratio of the said judgments of the Apex Court in the case of Steel Authority of India and even in case of valid abolition of contract labour the question of absorption would not arise and even in case of failure to follow the requirement of Section 7 and 12 of the Contract Labour (Regulation and Abolition) Act, 1970 would not create a permanent direct relationship of master and servant between the principal employer and the contract labour. At the most, non-compliance would make the principal employer and the contractor liable for action under the Act.”

Therefore, the ground of non-compliance of the mandatory provisions of the CLRA Act does not confer any special status on the workmen nor render any help to them.

24. Ld. Counsel for the workmen has laid great emphasis on the ground that in this case Hon'ble Apex Court has directed this Tribunal to consider the case of the petitioners and on this ground it is urged that this Tribunal is bound by the directions of the Hon'ble Apex Court and to grant relief to the petitioners. It is submitted that Hon'ble Apex Court must have found some substance in the claim of the workmen that is why such a direction has been given. What would be the effect of directions to consider the claim of a party by the Hon'ble Apex Court has been considered by the Hon'ble Apex Court in the case of A.S.R.T.C. & Ors. Vs. G. Srinivas Reddy and Ors., 2006 LLR 433. In paragraph 13.5 Hon'ble Court observed as under:

“13.5) There are also several instances where unscrupulous petitioners with the connivance of ‘pliable’ authorities have misused the direction ‘to consider’ issued by court. We may illustrate by an example. A claim, which is stale, time-barred or untenable, is put forth in the form of a representation. On the ground that the authority has not disposed of the representation with a reasonable time, the person making the representation approaches the High Court with an innocuous prayer to direct the authority to ‘consider’ and dispose of the representation. When the court disposes of the petition with a direction to ‘consider’, the authority grants relief, taking shelter under the order of the court directing him to ‘consider’ the grant of relief. Instances are also not wanting where authorities, unfamiliar with the process and practice relating to writ proceedings and the nuances of judicial review, have interpreted or understood the order ‘to consider’ as directing grant of relief sought in the representation and consequently granting reliefs which otherwise could not have been granted. Thus, action of the authorities granting undeserving relief, in pursuance of orders to ‘consider’, may be on account of ignorance, or on account of bonafide belief that they should grant relief in view of court’s direction to ‘consider’ the claim, or on account of collusion/connivance between the person making the representation and the authority deciding it. Representations of daily wagers seeking regularization/absorption into regular service is a species of cases, where there has been a large scale misuse of the orders ‘to consider’.”

Thus simply because Hon'ble Apex Court has directed this Tribunal to consider the case of the workmen, that cannot be taken as an implied direction of the Hon'ble Apex Court to order absorption of the workmen. The direction to consider means to consider in accordance with law. It has also been argued on behalf of the Railways that most of the workmen have attained the age of superannuation. Therefore, no relief, as per the Rules of the Railways, can be granted to them. A perusal of the report of the screening committee shows that even at that time when the screening committee considered the individual cases in the year 2013, most of the workmen were over aged and by the passage of time more workmen must have crossed the maximum age bar.

25. Now we come to the last point i.e. the main Reference. As concluded earlier, the workmen were the contractor's labourer. They cannot automatically become the employees of the Railways by abolition of the contract labourer system. Therefore, a direction was given to constitute the screening committee and consider the individual cases. In compliance of such directions screening committee was formed and the individual cases were considered. At this point, it is pertinent to quote the observation of the Hon'ble Calcutta High Court in Writ Petition filed by the society on behalf of the workmen wherein Hon'ble Calcutta High Court in W.P. No. 3808 of 2013 vide its judgment dated 25.02. 2013 has observed as under:

“Under the circumstances, this Court is firmly of the view that the committee has strictly followed the judgment of the Hon'ble Supreme Court of India but even now if the petitioners have still claimed perversity that their case have not been dealt with then their remedy if any, lies not before this Court but before the industrial adjudicatory machinery.”

The aforementioned observation of the Hon'ble Calcutta High Court on the writ petition filed by these workmen in this case shows that the directions given by the Hon'ble Apex Court were strictly followed by the screening committee. But even then, the workmen are claiming that their matters were not properly dealt with and report of the screening committee was perverse. The only ground to challenge the report that it was perverse is that individual notices to the workmen were not given nor any opportunity of hearing was given to each workman. At this juncture, I would like to mention that these workmen from the very beginning from the year 1987 till now are pursuing their matter through their society. At no point of time, any of the workmen, as individual, moved any Court for seeking relief. It is pertinent to note that inspite of specific direction of the Calcutta High Court as mentioned earlier, the workmen have not preferred to file individual applications before this Tribunal instead, they moved the Government collectively for this reference. Perusal of the report of the screening committee shows that before the committee, their society represented the workmen and notice to the workmen were given through publication in the newspaper. On the request of the society second publication was again made. More than 600 workmen have filed their bio-data before the screening committee which were considered by the screening committee so it cannot be said that the workmen had no notice of the screening committee. The workmen who were seeking relief through the society at every stage and also before the screening committee cannot at such a belated stage raise it as a ground that they were not given individual notices. Apart from it, the screening committee was supposed to screen the cases of each workman on the basis of their bio-data. It was not a departmental enquiry where the notice of date, time and place ought to have been given to each

workmen and opportunity of personal hearing was also necessary. It has nowhere been argued that how their interest were adversely affected for want of opportunity of personal hearing. Unless and until and prejudice is shown to have been caused no benefit can be availed by the workmen.

26. As per the schedule of reference, the main question which is referred to this Tribunal is whether rejection of the demand of the workmen who were contractor's labourer is legal and justified. It is really surprising that on this point Ld. Counsel for the workmen has not made any submission. No argument has been advanced to show as to what is the illegality, irregularity or perversity in the report of the screening committee. The Hon'ble Calcutta High Court, as mentioned earlier, has already observed that the directions of the Hon'ble Apex Court have been strictly complied with by the screening committee. A careful perusal of the report of the screening committee also shows that the view taken by the screening committee was absolutely correct.

27. Thus it is established that these workmen were contractor's labourer who were engaged for a specific period. The termination of the contract by the railways by order dated 6th August, 1983 has been confirmed by the Hon'ble Calcutta High Court in the writ petition filed by the contractor. Hon'ble Apex Court in Civil Appeal No. 1358 of 1986 which was between same parties has observed that contractor's labourers cannot be considered as employed by the railways.

28. In this case there is no dispute that these workmen were removed by termination of contract by order dated 6th August, 1983. The matter of their regularization has been raised before this Tribunal in the year 2014 i.e. after about 31 years. This delay is also fatal. On this point reference may be made to the decision of the Hon'ble Apex Court in the case of Oshiar Prasad & Ors. v. Employers in relation to the management of Sudmdih Coal Washery, (2015) 4 SCC 71 whether after such a long gap and when the relationship of workman and employer has ceased to exists, such a claim can be considered on this point. In this case the Hon'ble Apex Court held as under:

“24. Indeed a dispute regarding the appellants' absorption was capable of being referred to in reference for adjudication, had the appellants been in the service of the Contractor or/and BCCL. But as said above, since the appellants' services were discontinued or/and retrenched (whether rightly or wrongly) long back, the question of their absorption or regularization in the services of BCCL, as claimed by them, did not arise and nor could this issue have been gone into on its merits for the reasons that it was not legally possible to give any direction to absorb/regularize the appellants so long as they were not in the employment.

25. It is a settled principle of law that absorption and regularization in service can be claimed or/and granted only when the contract of employment subsists and is in force inter se employee and the employer. Once it comes to an end either by efflux of time or as per the terms of the contract of employment or by its termination by the employer, then in such event, the relationship of employee and employer comes to an end and no longer subsists except for the limited purpose to examine the legality and correctness of its termination.

26. In our considered opinion, the only industrial dispute, which existed for being referred to the Industrial Tribunal for adjudication was in relation to termination of the appellants' employment and whether it was legal or not? It is an admitted fact that it was not referred to the Tribunal and, therefore, it attained finality against the appellants.”

29. These workmen for the first time raised their claim after about 4 years of the termination of contract by filing Original Application before the Central Administrative Tribunal. Law is settled on the point that the contractor's labourer by abolition of the contract labour system cannot automatically become the employees of the principal employer. There is difference between contractor's labours and contract labours.

30. The Tribunal has also gone through the memorandum which was issued on the basis of the report of the screening committee consisting of three senior officers of the Eastern Railway. This memorandum shows that the Secretary of this society was requested to submit complete applications with necessary papers/documents in support of the claim alongwith the copy of membership list to the office of the Chief Personnel Officer of the Eastern Railway vide letter dated 9th October, 2012. In response to this, the Secretary of the society, vide letter dated 17th October, 2012, intimated that earlier society has published newspaper notification by which members of the society were informed for submission of their bio-data and necessary papers in support of their claim for absorption in the railways. In response to the said publication 625 members had submitted their bio-data and necessary papers to the railways. It was further intimated by the Secretary that the society is going to publish another newspaper notification and if any further bio-data is received from the members, same will be forwarded and also requested to take necessary action. In pursuance of the subsequent notification 39 more persons filed their bio-data. Thus total 664 persons have filed their bio-data. The perusal of the report of the screening committee shows that they have not considered the claim of 102 applicants who were not party before the High Court. Such persons were excluded after verification. Application at Serial No. 361 was without signature and the same was also excluded. After screening records the committee found that contract was entered into with contractor firm M/s. R.M. Bhakat and R.K. Das for two years which was further extended for 2 years

and later terminated on 6th August, 1983. The committee, therefore, decided that only such of the applicants who had completed age of 18 years as on 6th August, 1983 and were not above 60 years as on 01.01.2013 may be included within the purview of verification. On such verification of the applications, only 239 applicants were found to be falling within the purview of verification. Separate list of such 239 applicants was prepared. It was also noted by the committee that applicants have claimed to have worked for 1 year to 18 years but no document to substantiate such claim was filed. Out of 239 such applicants only 84 applicants had indicated their qualification as passed matric and above which was the minimum educational qualification for appointment in Group – D posts in the railways. The age of the most applicants was more than 47 years on the relevant date which was more than maximum prescribed age limit for appointment in Group – D posts in the railways. Accordingly, the claim of the workmen was not found to be sufficient by the committee. Thus the perusal of the report shows that even in the year 2013 none of the workmen was within the minimum and maximum age limit prescribed in the rules of the railways. Only 84 of the workmen had minimum qualification.

31. Ld. Counsel for the workmen has argued that the case of Uma Devi has no application in the industrial disputes and labour cases. This argument of the workmen has not been challenged by the Ld. Counsel for the railways. He has argued that the screening committee has not rejected the claim on the ground that they are not entitled for absorption/regularization in view of the pronouncement of the Hon'ble Apex Court in the case of Uma Devi. It is submitted that the procedure for appointment in the railway service in Group – D posts provides for minimum and maximum age and also provide for the minimum qualification. The committee on screening found that none of these workmen were within the ambit of the said requirement.

32. This Tribunal has full sympathy with these workmen who are litigating for a long time. But on considering their claim on the touch-stone of legal principles their claim is found to be devoid of merits.

33. Therefore, in this back ground, workmen had no claim for their absorption or regularization and their claim was rightly declined by the screening committee. The workmen are not entitled to any relief.

Reference is answered accordingly.

Dated, Kolkata,
The 14th July, 2017

JUSTICE SURENDRA VIKARAM SINGH RATHORE, Presiding Officer

नई दिल्ली, 10 अगस्त, 2017

का.आ. 1908.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उप महाप्रबंधक, भारत संचार निगम लिमिटेड बांसवाडा व अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 91/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.06.2017 को प्राप्त हुआ था।

[सं. एल-40012/44/2006-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 10th August, 2017

S.O. 1908.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 91/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in Annexure, in the industrial dispute between the employers in relation to the Deputy General Manager, BSNL, Banswada & Others and their workman, which were received by the Central Government on 30.06.2017.

[No. L-40012/44/2006-IR (DU)]

RAJENDRA JOSHI, Dy. Director

अनुबंध

केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

सी.जी.आई.टी. प्रकरण सं. 91/2006

भरत पाण्डेय, पीठासीन अधिकारी

रेफरेन्स सं. एल-40012/44/2006-आईआर (डीयू) दिनांक 08/11/2006

श्री शान्तिलाल पुत्र श्री थाना जी बलात,
निवासी नई बस्ती पोस्ट माण्डवा,
जिला- डूंगरपुर, राजस्थान

बनाम

1. उप महाप्रबन्धक, भारत संचार निगम लि.

बांसवाडा।

2. उपमण्डल अधिकारी,

भारत संचार निगम लि.

जिला- डूंगरपुर, राजस्थान

प्रार्थी की तरफ से : श्री प्रभूलाल श्रीमाली – एडवोकेट

अप्रार्थी की तरफ से : श्री प्रमोद शाण्डिलय – एडवोकेट

पंचाट

दिनांक : 25.05.2017

1. केन्द्रीय सरकार द्वारा औद्योगिक विवाद अधिनियम 1947 की धारा 10 उपधारा 1 खण्ड (घ) के अन्तर्गत दिनांक 08.11.2006 के आदेश से प्रेषित विवाद के आधार पर यह प्रकरण न्यायनिर्णयन हेतु संस्थित है। केन्द्रीय सरकार द्वारा प्रेषित विवाद निम्नवत् है :–

“Whether the action of the management of Sub-Division Officer, BSNL, Dungerpur in terminating the services of their workman Shri Shanti Lal S/o Shri Thanaji Blat w.e.f. 1.8.2005 is legal and justified? If not, to what relief the workman is entitled ?”

2. याचिका में दिये गये तथ्य के अनुसार संक्षिप्ततः याची का कथन है कि उसकी नियुक्ति विपक्षी संस्थान में दिनांक 14.3.2004 को ड्राइवर के पद पर हुई थी। प्रार्थी को 65/- दैनिक मजदूरी की दर से विपक्षी मजदूरी देता था। प्रार्थी ने उपमण्डल अधिकारी, डूंगरपुर की वाहन पंजीयन संख्या आर.जे. 03 सी 0977 को दिनांक 14.3.2004 से 31.7.05 तक नियमित रूप से संचालित की। प्रार्थी रविवार, राष्ट्रीय अवकाश एवं त्यौहार के दिन भी अवकाश में वाहन चलाता था। अचानक दिनांक 9.8.05 को विपक्षी उपमण्डल अधिकारी, ने अकारण प्रार्थी को कार्य पर लेने से इन्कार कर दिया परन्तु कार्य छोड़ने के लिए कोई लिखित आदेश नहीं दिया। प्रार्थी उक्त स्थिति के बावजूद कई दिन कार्य पर उपस्थित आया परन्तु उससे कार्य नहीं लिया गया।

3. विपक्षी ने प्रार्थी की चार माह की वेतन का भुगतान भी नहीं किया और कई महीने बाद मनिआर्डर के माध्यम से भिजवाया जिसे प्रार्थी ने प्राप्त किया।

4. प्रार्थी कभी दो घंटे कभी चार घंटे अतिरिक्त कार्य भी करता था जिसका भुगतान मांगने पर नाराज होकर विपक्षी ने अवैध ढंग से प्रार्थी को सेवामुक्त कर दिया। प्रार्थी दावा प्रस्तुति की तिथि तक बेरोजगार है। प्रार्थी को विपक्षी ने बिना नोटिस, नोटिस के बदले वेतन भुगतान एवं छंटनी मुआवजा दिये सेवामुक्त कर दिया।

5. प्रार्थी को सेवा से हटाये जाने के बाद नये चालक को नियुक्त किया गया है जो अनुचित श्रम व्यवहार है। प्रार्थी की सेवामुक्त औद्योगिक विवाद अधिनियम की धारा 25 (एफ), 25 (जी) एवं 25 (एच) का उल्लंघन है तथा निरस्त होने योग्य है। प्रार्थी ने एक वर्ष की अवधि में 240 दिवसों से अधिक दिन तक कार्य किया है जिसकी पुष्टि वाहन के लॉग-बुक से हो सकती है। उक्त स्थिति में प्रार्थी ने याचना की है कि उसकी सेवामुक्ति दिनांक 1.8.05 को अवैध घोषित कर उसे सेवा की निरन्तरता सहित समस्त लाभ के साथ सेवा में पुनर्स्थापित किया जाए।

6. विपक्ष ने क्लेम के जवाब में याचिका के प्रस्तर 1 लगायत 7 से समस्त कथन को अस्वीकार कर यह कहा है कि प्रार्थी की विपक्ष द्वारा दैनिक मजदूरी पर नियुक्ति का कथन और विपक्षी की वाहन को दिनांक 14.3.2004 से 31.7.05 तक संचालन का कथन गलत है। प्रार्थी को विपक्षी द्वारा कभी भी ड्राइवर के पद पर नियुक्ति नहीं दी गयी। प्रार्थी को विपक्षी द्वारा कभी भी निर्धारित नियुक्ति प्रक्रिया के अन्तर्गत सेवा में नहीं लिया गया।

7. आगे कथन है कि प्रार्थी को संविदा पर सुरक्षा प्रहरी के कार्य हेतु रेस्ट एश्योर्ड सर्विसेज, नई टिल्ली के माध्यम से मार्च 2005 से निर्धारित अवधि के लिए रखा गया था। संविदा की अवधि की समाप्ति पर उसकी सेवा स्वतः समाप्त हो जाती है। प्रार्थी को ऐसी स्थिति में विपक्ष द्वारा नोटिस देने की कोई वाध्यता नहीं थी। प्रार्थी को मजदूरी का भुगतान भी रेस्ट एश्योर्ड सर्विसेज द्वारा ही होता था। प्रार्थी को वेतन भुगतान में यदि विलम्ब हुआ है तो वह उक्त एजेन्सी के स्तर पर हुआ है जिसके लिए विपक्ष की कोई जिम्मेदारी नहीं है। विपक्ष द्वारा प्रार्थी के अतिरिक्त समय में भी कार्य करने के कथन को गलत कहा गया है। प्रार्थी कभी विपक्षी के नियोजन में नहीं रहा।

8. आगे विपक्ष का कथन है कि विपक्षी द्वारा अनुचित श्रम व्यवहार करने का कथन भी गलत है एवं विपक्षी द्वारा धारा 25 (एफ), 25 (जी) एवं 25 (एच) के उल्लंघन की बात भी गलत है। प्रार्थी “कर्मकार” की परिभाषा से आच्छादित नहीं है एवं संविदा पर रखे गये प्रार्थी को श्रमिक मानते हुए किसी प्रकार का अनुतोष न्यायाधिकरण द्वारा दिया जाना सम्भव नहीं है।

9. विशेष कथन में यह कहा गया है कि आवश्यकता पड़ने पर प्रार्थी से विपक्षी द्वारा आकस्मिक चालक का कार्य दिनांक 14.3.2004 से 5.10.04 तक कुल 93 दिन की अवधि के लिए लिया गया था जिसका विवरण वादोत्तर के साथ संलग्नक-1 संलग्न है। दिनांक 6.10.04 से फरवरी 05 तक प्रार्थी ने कोई कार्य नहीं किया। मार्च 05 से जुलाई 05 तक प्रार्थी उक्त एजेन्सी के माध्यम से सुरक्षा प्रहरी (गार्ड) के रूप में संविदा पर रखा गया था जिसका भुगतान उक्त एजेन्सी द्वारा कर दिया गया था।

10. आगे यह कथन है कि उक्त एजेन्सी द्वारा प्रार्थी को विपक्षी के यहां मार्च 2005 में सुरक्षा प्रहरी के कार्य हेतु भेजा गया था जिसने विभाग के जीप की लॉग बुक में हेराफेरी की और दिनांक 14.3.2004 से 31.7.05 की अवधि हेतु “हस्ताक्षर ड्राइवर” के कॉलम में अपने हस्ताक्षर एक साथ कर दिये। इस बात की जानकारी दिनांक 8.8.05 को कलर्क श्री नानूराम के डेपुटेशन से लौटकर वापस आने पर हुई। श्री नानूराम ने लिखित सूचना दी की उनके सागवाड़ा डेपुटेशन पर डयूटी हेतु चले जाने के बाद प्रार्थी ने मेज की दराज से लागबुक निकालकर अपने हस्ताक्षर एक ही साथ कर दिये हैं। विपक्षी संख्या के नियमनुसार स्थायी चालक ही लागबुक में हस्ताक्षर कर सकते हैं इस कारण लागबुक में हस्ताक्षर के कॉलम में किसी का हस्ताक्षर नहीं था जैसा प्रार्थी ने हस्ताक्षर कर दिये। विपक्षी संख्या एक ने इसकी सूचना मण्डल अभियन्ता (प्रशासन एवं योजना) बॉसवाडा को पत्र द्वारा लागबुक सहित अवलोकनार्थ भेजी जिस पर दोषी व्यक्ति को कारण बताओ नोटिस देने का आदेश हुआ। उक्त निर्देशनुसार दिनांक 12.8.05 को प्रार्थी को कारण बताओ नोटिस भेजी गयी। इसके बाद प्रार्थी ने जरिये अधिवक्ता नोटिस भेजी जिसका जवाब मण्डल अभियन्ता द्वारा दिनांक 10.11.95 को भेजा गया। आगे प्रार्थना की गयी है कि प्रार्थी की याचिका खारिज की जाए।

11. प्रार्थित में कहा गया है कि प्रार्थी विपक्ष का कर्मचारी नहीं है बल्कि रेस्ट एश्योर्ड सर्विसेज, नई दिल्ली का कर्मचारी है।

12. प्रार्थी ने इसके पहले श्रम न्यायालय में प्रकरण संख्या 6/2006 अन्तर्गत धारा 33 सी (2) प्रस्तुत किया था जिसे उसने स्वयं स्वेच्छया वापस ले लिया और पुनः गलत तथ्यों के आधार पर यह याचिका प्रस्तुत की। प्रार्थी द्वारा जानबुझकर उक्त एजेन्सी को पक्षकार नहीं बनाया गया है जिसका वह कर्मचारी है। प्रार्थी ने यह याचिका बादहूसोच प्रस्तुत की है जो खारिज होने योग्य है तथा प्रार्थी किसी अनुतोष को पाने का हकदार नहीं है।

13. प्रार्थी पक्ष की तरफ से जवाब के विरुद्ध कोई रिज्वायन्डर नहीं प्रस्तुत है। प्रार्थी ने साक्ष्य में अपनी शापथपत्र प्रस्तुत की है जिसकी प्रतिपरीक्षा दिनांक 22.2.12 को की गयी है। विपक्षी साक्षी श्री राकेश कुमार जैन, मण्डल अभियन्ता की अधिक प्रतिपरीक्षा दिनांक 5.10.16 को हुई है तथा पत्रावली साक्षी की शेष प्रतिपरीक्षा में नियत थी। तत्पश्चात पक्षकारों के बीच आपसी सुलह की इच्छा बनी जिसके आधार पर पक्षकारों की तरफ से सुलह की आवेदन प्रस्तुत हुई। दिनांक 16.5.17 तथा 25.5.17 को इस मामले को सुलह के आधार पर मामले को निस्तारित करते हुए आदेश पारित किये गये जो निम्नवत् है :-

“16.5.17 पुकार की गयी शान्तिलाल व्यक्तिगत रूप से अपने विद्वान प्रतिनिधि के साथ उपस्थित है। विपक्ष के विद्वान प्रतिनिधि उपस्थित है।

याची की तरफ से मुकदमें को वापस लेने की आवेदन प्रस्तुत हुई। विपक्ष के विद्वान प्रतिनिधि ने आवेदन पर अनापत्ति अंकित की। मुकदमें को वापस लेने हेतु सुलह की शर्ते उभयपक्ष को पढ़कर सुनायी एवं समझायी गयी सुलहनामे को पक्षकारों द्वारा स्वेच्छया प्रस्तुत किया जाना पाया गया अतः सुलहनामे की तसदीक प्रार्थी द्वारा एवं उभयपक्ष के विद्वान प्रतिनिधि द्वारा की गयी। पत्रावली वार्ते निस्तारण दिनांक 25.5.17 को लोक अदालत में पेश हो

हस्ताक्षर अपठनीय

(पीठासीन अधिकारी)“

“25.5.17 पत्रावली आज लोक अदालत में प्रस्तुत हुई। पुकार की गयी। उभयपक्ष के विद्वान प्रतिनिधि उपस्थित है। याची ने आवेदन प्रस्तुत की है कि लोक अदालत की भावनाओं से प्रेरित होकर प्रार्थी अपनी याचिका को वापस लेना चाहता है। प्रार्थी और विपक्षीगण के मध्य अब कोई विवाद नहीं रह गया है और प्रार्थी विपक्षीगण के विरुद्ध इस मामले को आगे नहीं चलाना चाहता है। प्रार्थी अन्यत्र सेवारत है तथा स्वेच्छया अपनी याचिका वापस ले रहा है। अन्त में प्रार्थी ने प्रार्थना की है कि मामले को वापस लेने की उसकी आवेदन स्वीकार कर पंचाट पारित किया जाए।

उक्त तथ्य एवं परिस्थिति में मुकदमें को वापस लेने की प्रार्थी की आवेदन स्वीकार की जाती है। प्रार्थी की याचित अनुतोष से सम्बन्धित याचिका खारिज की जाती है। पंचाट तदनुसार पारित किया जाता है। प्रार्थी की याचित अनुतोष से सम्बन्धित याचिका को वापस लेने की आवेदन दिनांकित 16-5-2017 पंचाट का अंश होगी।

हस्ताक्षर अपठनीय

(पीठासीन अधिकारी)“

14. न्यायनिर्णयन हेतु प्रेषित निर्देश का उत्तर उक्त प्रकार दिया जाता है। पंचाट तदनुसार पारित किया जाता है।

भरत पाण्डेय, पीठासीन अधिकारी

नई दिल्ली, 10 अगस्त, 2017

का.आ. 1909.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डाकघर के सहायक अधीनियम, झालावार, राजस्थान एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 67/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.05.2017 को प्राप्त हुआ था।

[सं. एल-40012/20/2006-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 10th August, 2017

S.O. 1909.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 67/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in Annexure, in the industrial dispute between the employers in relation to the Assistant Superintendent of Post Office, Jhalawar, Rajasthan and their workman, which were received by the Central Government on 30.05.2017.

[No. L-40012/20/2006-IR (DU)]

RAJENDRA JOSHI, Dy. Director

अनुबंध**केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर****सी.जी.आई.टी. प्रकरण सं. 67/2006**

भरत पाण्डेय, पीठासीन अधिकारी

रेफरेन्स सं. एल-40012/20/2006-आईआर (डीयू) दिनांक 20/10/2006

Shri Gulab Chand S/o Shri Mangi Lal Lodha,
Vill: & Post Ghatauli, Tehsil Aklera,
Jhalawar (Rajasthan)

V/s

The Assistant Superintendent of Post Office,
Jhalawar (Rajasthan)

प्रार्थी की तरफ से : श्री एम.एफ.बेग — एडवोकेट

अप्रार्थी की तरफ से : श्री तेजप्रकाश शर्मा — एडवोकेट

पंचाट

दिनांक : 06. 04. 2017

1. केन्द्रीय सरकार द्वारा औद्योगिक विवाद अधिनियम 1947 की धारा 10 उपधारा 1 खण्ड (घ) के अन्तर्गत दिनांक 20.10.2006 के आदेश से प्रेषित विवाद के आधार पर यह प्रकरण न्यायनिर्णयन हेतु संरिथ्त है। केन्द्रीय सरकार द्वारा प्रेषित विवाद निम्नवत् है :-

“Whether the action of the management of the Assistant Superintendent of Post Offices, Jhalawad in terminating the services of their workman Shri Gulab Chand w.e.f. 9-11-2000 is legal and justified? If not, to what relief the workman is entitled to and from which date?”

दिनांक 1.5.2013 को प्रार्थी पक्ष ने एक आवेदन प्रस्तुत कर प्रार्थना की कि रिफरेन्स में सेवा से मुक्त होने की तिथि 9.11.2000 दर्ज होनी चाहिए जो त्रुटिवश 9.11.04 अंकित हो गयी है अतः इसे संशोधित करने का आदेश पारित किया जाय। विषय की अनापत्ति के आधार पर आवेदन दिनांक 17.12.13 को स्वीकार की गयी। श्रम मन्त्रालय द्वारा 9.4.14 को आदेश से रिफरेन्स में 9.11.2004 की जगह 9.11.2000 पढ़े जाने का आदेश दिया गया है जिसके अनुसार रिफरेन्स में 9.11.2000 तिथि अंकित की गयी है जैसा कि उपर अंकित रिफरेन्स में दर्शाया गया है।

2. स्टेटमेन्ट ऑफ क्लेम में दिये गये तथ्यों के अनुसार संक्षिप्ततः याची का कथन है कि उसकी नियुक्ति दिनांक 28.6.99 को ई.डी.डी.ए. के पद पर 2700/- प्रतिमाह पर अप्रार्थी प्रबंधकगण द्वारा की गई थी।

3. प्रार्थी श्रमिक अप्रार्थी प्रबंधकगण के आदेश एवं निर्देशों के तहत बराबर ईमानदारी एवं मेहनत से कार्य करता रहा तथा उसके कार्य के बारे में अप्रार्थी प्रबंधकगण को किसी प्रकार की कोई शिकायत नहीं रही।

4. प्रार्थी श्रमिक से दिनांक 8.11.2000 तक कार्य लिया गया तथा दिनांक 9.11.2000 को बिना कारण बताये सेवामुक्त कर दिया गया। अप्रार्थी प्रबंधकगण ने कार्य के होते हुए जानबूझकर अनावश्यक ब्रेक दिये किन्तु प्रार्थी श्रमिक ने 240 दिन की सेवा अवधि पूरी कर ली।

5. प्रार्थी श्रमिक सदैव अप्रार्थी प्रबंधक के निर्देशानुसार कार्य करता था तथा कभी किसी प्रकार की कोई लापरवाही नहीं बरतता था ना ही किन्हीं आदेश की अवहेलना ही करता था।

6. प्रार्थी श्रमिक के कार्य के बारे में यदि किसी प्रकार की कोई शिकायत थी तो कारण बताओं नोटिस दिया जाकर आरोप पत्र दिया जाना चाहिये था तथा जांच कार्यवाही द्वारा प्रार्थी श्रमिक को नियोजक के गवाहों से जिरह करने का अवसर दिया जाना चाहिये था तथा अपने बचाव में सफाई पेश करने का अवसर दिया जाना चाहिये था।

7. यदि अप्रार्थी प्रबंधक प्रार्थी की सेवामुक्त दुराचरण के आधार पर समाप्त करना ना माने तो भी उनका उत्तरदायित्व था कि वो औद्योगिक विवाद अधिनियम, 1947 के मूलभूत प्रावधानों की पालना करते। यहां अप्रार्थी प्रबंधकगण द्वारा न तो एक माह का नोटिस दिया गया और न ही छंटनी का मुआवजा दिया गया। इस प्रकार धारा 25 एफ औद्योगिक विवाद अधिनियम 1947 का उल्लंघन किया गया है।

8. अप्रार्थी प्रबंधक ने प्रार्थी श्रमिक की सेवायें समाप्त करने से पूर्व न तो कोई वरिष्ठता सूची बनाई और न ही वरिष्ठता सूची प्रकाशित ही की गई। इस प्रकार सेवायें समाप्त करना अवैध एवं अनुचित है क्योंकि धारा 25 जी औद्योगिक विवाद अधिनियम 1947 एवं औद्योगिक विवाद अधिनियम 1958 के नियम 78 का उल्लंघन किया।

9. अप्रार्थी प्रबंधकगण के अधीन कार्य का कोई अभाव नहीं है। इस प्रकार कार्य के होते हुए प्रार्थी श्रमिक की सेवायें समाप्त किया जाना अनफेयर लेबर प्रेक्टिस व विकटीमार्ईजेशन की श्रेणी में आता है।

10. प्रार्थी श्रमिक की सेवायें समाप्त करने के बाद नई नियुक्ति की गयी है तथा प्रार्थी श्रमिक को कोई प्राथमिकता ना देकर धारा 25 एच औद्योगिक विवाद अधिनियम 1947 का उल्लंघन किया गया है।

11. प्रार्थी श्रमिक ने अप्रार्थी प्रबंधक से कई बार निवेदन किया कि उसे काम पर ले लेवे परन्तु कोई ध्यान नहीं दिया गया।

12. प्रार्थी श्रमिक ने सेवामुक्ति के बाद अप्रार्थी प्रबंधकगण से कई बार निवेदन किया परन्तु उसे काम पर नहीं लिया गया तथा यह आश्वासन देते रहे कि तुम्हारे साथ के अशोक कुमार शर्मा व अन्य का वाद चल रहा है तथा उस वाद का निस्तारण होने पर तुम्हें भी काम पर ले लिया जावेगा। अप्रार्थी के यहां कार्य का कोई अभाव नहीं है।

13. प्रार्थी श्रमिक ने अपनी अवैध सेवामुक्ति का विवाद श्रीमान केन्द्रीय सहायक श्रम आयुक्त एवं समझौता अधिकारी, श्रम मंत्रालय, भारत सरकार, कोटा, राज. के यहां पर प्रस्तुत किया। जहां पर अप्रार्थी प्रबंधकगण द्वारा सहयोग न करने के कारण असफल प्रतिवेदन श्रीमान केन्द्रीय सहायक श्रम आयुक्त एवं समझौता अधिकारी, कोटा ने माननीय केन्द्रीय सरकार, श्रम विभाग, दिल्ली को प्रेषित की तथा केन्द्रीय सरकार ने उक्त वाद को न्याय निर्णयार्थ माननीय न्यायालय को प्रेषित किया है।

14. मैं मेरी सेवापूर्थक दिनांक 9.11.2000 से बेरोजगार बैठा हूं तथा आय का अन्य कोई साधन नहीं है। मेरा व मेरा परिवार का पालन पोषण करना दुर्लभ हो रहा है।

15. क्लेम के विरुद्ध जवाब में विपक्ष ने याचिका के प्रस्तर एक के विरुद्ध यह कहा है कि प्रार्थी को अस्थायी रूप से नियमित नियुक्ति होने तक stop gap arrangement में लगाया गया था और प्रार्थी ने स्वयं लिखित रूप में यह कथन प्रस्तुत किया था कि उसका इस पद पर स्थायी रूप में चुनाव नहीं होता है तो वह बिना किसी कानूनी कार्यवाही किये अपना पद छोड़ देगा। प्रार्थी ने अपने उक्त अभिकथन का पालन कर दिनांक 9.11.2000 को पद छोड़ दिया और लगभग पौँच वर्ष बाद इस मुददे को 14.7.05 को श्रम आयुक्त (केन्द्रीय) कोटा के समक्ष अनावश्यक रूप से उठाया। प्रार्थी न तो 'श्रमिक' की परिभाषा से आच्छादित है न ही उस पर ग्रामीण डाक सेवक, आचरण एवं रोजगार नियमावली 2001 लागू होती है।

16. स्टेटमेन्ट ऑफ क्लेम की मद संख्या 3 अस्वीकार्य है। प्रार्थी को तत्कालीन सहायक अधीक्षक, डाकघर, झालावाड द्वारा नियुक्ति नहीं दी गई थी इस प्रकार प्रार्थी डाक विभाग के कर्मकार नहीं हो सकते हैं, अतः प्रार्थी पर औद्योगिक विवाद अधिनियम 1947 के प्रावधान लागू होने का प्रश्न नहीं उठता है। अतः निवेदन है कि प्रार्थी का वाद खारिज करने की कृपा करे। यदि प्रार्थी को स्थायी नियुक्ति दी गई तो उन्हें नियुक्ति पत्र पेश करना चाहिए जो नहीं किया गया है। इनको नियुक्ति पत्र जारी नहीं किया गया था। तत्कालीन सहायक अधीक्षक, डाकघर, झालावाड द्वारा डाक अधिदर्शक को इनको पूर्णतया अस्थायी तौर पर एवजी के रूप में लगाया गया था। इनसे धोषणा पत्र भी लिया गया था कि अगर नौकरी से हटा देंगे तो ये किसी प्रकार का दावा नहीं करेंगे। (अस्थाई नियुक्ति पत्र एवं धोषणा पत्र संलग्न है) अतः प्रार्थी डाक विभाग के कर्मचारी नहीं हैं तथा इस सम्बन्ध में माननीय सुप्रीम कोर्ट की सिविल अपील संख्या 3389,3390,3387,3388 -92/1996 में पारित निर्णय की प्रति (अनेकजर आर-15) जवाब के साथ संलग्न है जिसमें माननीय सर्वोच्च न्यायालय ने डाक विभाग को 'उद्योग' की परिभाषा से आच्छादित नहीं माना है।

17. स्टेटमेन्ट ऑफ क्लेम की मद संख्या 4 में अंकित तथ्य को जानकारी के अभाव में अस्वीकार किया गया है जिसमें प्रार्थी ने कहा है कि उसे दिनांक 28.6.99 को ईडीडीए के पद पर 2700 रूपया मासिक वेतन पर नियुक्त किया गया था।

18. स्टेटमेन्ट ऑफ क्लेम की मद संख्या 5 अस्वीकार्य है। जैसा कि पैरा 3 में कहा गया है प्रार्थी डाक विभाग के कर्मकार ही नहीं थे। विभाग को जब ऐवजी की आवश्यकता रही, इनको बतौर ऐवजी लगाया गया था, अतः प्रार्थी पर औद्योगिक विवाद अधिनियम 1947 के प्रावधान लागू होने का प्रश्न नहीं उठता। अतः निवेदन है कि प्रार्थी का वाद खारिज करने की कृपा करें।

19. स्टेटमेन्ट ऑफ क्लेम की मद संख्या 6 के तथ्य जानकारी के अभाव में अस्वीकार्य है।

20. स्टेटमेन्ट ऑफ क्लेम की मद संख्या 7 अस्वीकार्य है। प्रार्थी को नियुक्ति नहीं दी गई थी तो इनके डाक विभाग का कर्मकार होने का प्रश्न नहीं उठता है। जहां तक कारण बताओ नोटिस का प्रश्न तो नोटिस केवल स्थाई नियुक्त विभागीय कर्मचारी को ही देना होता है। डाक विभाग को सुप्रीम कोर्ट ने 'उद्योग' इन्डस्ट्रीज नहीं माना है। अतः प्रार्थी का वाद खारिज करने की कृपा करें।

21. स्टेटमेन्ट ऑफ क्लेम की मद संख्या 8 अस्वीकार्य है। प्रार्थी को तत्कालीन सहायक अधीक्षक, डाकघर, झालावाड द्वारा नियुक्ति नहीं दी गई थी, अतः प्रार्थी डाक विभाग के कर्मचारी नहीं हो सकते थे। अतः डाक विभाग के नियम, ग्रामीण डाक सेवक (सर्विस एवं कण्डकट) रूल्स 1964 एवं वर्तमान में जी.डी.एस. (आचरण एवं नियोजन) नियमावली 2001 के प्राविधान प्रार्थी पर लागू नहीं होते हैं। डाक विभाग को माननीय सुप्रीम कोर्ट ने 'उद्योग' नहीं माना है अतः प्रार्थी पर औद्योगिक विवाद अधिनियम 1947 धारा 25 एफ के प्राविधान लागू नहीं होते हैं। अतः प्रार्थी का वाद खारिज करने की कृपा करें।

22. स्टेटमेन्ट ऑफ क्लेम की मद संख्या 9 अस्वीकार्य है। डाक विभाग के नियम ई.डी. (सर्विस एवं कण्डकट) रूल्स 1964 वर्तमान में जी.डी.एस. (आचरण एवं नियोजन) नियमावली 2001 के अनुसार केवल नियुक्त कर्मचारियों को ही वरिष्ठता सूची बनाई जाती है। डाक विभाग ने आवश्यक सेवा होने से वैकल्पिक व्यवस्था अपरिहार्य हो जाने से इनको केवल अस्थाई तौर पर लगाया था। अतः प्रार्थी पर औद्योगिक विवाद अधिनियम 1947 एवं औद्योगिक विवाद (केन्द्रीय) नियम 1957 के नियम 78 के प्राविधान लागू नहीं होते हैं। अतः उक्त प्राविधानों का उल्लंघन नहीं किया गया है एवं वाद निरस्त होने योग्य है।

23. स्टेटमेन्ट ऑफ क्लेम की मद संख्या 10 अस्वीकार्य है। डाक विभाग नियमों के तहत पात्र उम्मीदवार का चयन कर नियुक्ति देता है। कार्य नहीं होने की स्थिति में पूर्व में नियुक्त कर्मचारी के आ जाने पर वैकल्पिक व्यवस्था स्वतः निरस्तनीय है, तथा श्रमिक की सेवायें समाप्त किया जाना अनफेयर लेबर प्रेक्टिस व विकटीमाईजेशन की श्रेणी में नहीं आता है।

24. स्टेटमेन्ट ऑफ क्लेम की मद संख्या 11 अस्वीकार्य है। प्रार्थी को हटाये जाने से लेकर अब तक इस पद पर कोई नई नियुक्ति नहीं की गई है। श्री देवी सिंह ग्रामीण डाक सेवक, आसलपुर डाकघर दिनांक 9.11.2000 से लगातार कार्यरत है। अतः प्रार्थी पर औद्योगिक विवाद अधिनियम 1947 के 25 एच के प्रावधान लागू नहीं होते हैं।

25. स्टेटमेन्ट ऑफ क्लेम की मद संख्या 12 अस्वीकार्य है। प्रार्थी द्वारा कोई साक्ष्य प्रस्तुत नहीं किया गया है। अतः वाद निरस्त होने योग्य है।

26. स्टेटमेन्ट ऑफ क्लेम की मद संख्या 13 अस्वीकार्य है। प्रार्थी द्वारा कोई साक्ष्य प्रस्तुत नहीं किया गया है। अतः वाद निरस्तनीय है। सहायक अधीक्षक झालावाड, माननीय प्रवर अधीक्षक डाकघर, कोटा के लिखित स्वीकृति के बाद ही किसी को कार्य पर रखा जा सकता है। तत्कालीन अथवा वर्तमान सहायक अधीक्षक द्वारा इस प्रकार का आश्वासन दिया जाना संभव नहीं है, अतः वाद निरस्तनीय है।

27. जवाबुलजवाब में याचिका के कथन की पुनरावृत्ति की गयी है एवं श्रमिक तथा नियोक्ता के रिश्ते उभयपक्ष के बीच अस्तित्व में होने का कथन किया गया है। यह भी कहा गया है कि विपक्ष द्वारा प्रार्थी की नियुक्ति की गयी है एवं विपक्षी 'उद्योग' की परिभाषा से आच्छादित है एवं औद्योगिक विवाद अधिनियम के प्राविधान विपक्ष पर लागू होते हैं।

28. प्रार्थी की आवेदन के आधार पर रिफरेन्स में प्रार्थी की सेवा समाप्ति की तिथि 9.11.2004 को संशोधित कर 9.11.2000 करने का आदेश दिनांक 17.12.13 को पारित किया गया। श्रम मन्त्रालय द्वारा अपने आदेश दिनांक 9.4.2014 द्वारा संशोधन आदेश पारित किया गया जो दिनांक 30.4.2014 को इस न्यायाधिकरण को प्राप्त हुआ। इसके पूर्व दिनांक 27.7.11 को प्रार्थी की साक्ष्य के दौरान प्रतिपरीक्षा के समय विपक्ष ने कुछ अभिलेखों को पत्रावली पर प्रस्तुत करने हेतु एक आवेदन मुल्तवी प्रस्तुत की जो स्वीकार की गयी जिसके कारण आग की प्रतिपरीक्षा रोक दी गयी।

29. दिनांक 25.6.12 को विपक्ष ने अभिलेख सहित आवेदन अभिलेखों को पत्रावली पर लिये जाने हेतु प्रस्तुत की जो दिनांक 25.6.12 को ही स्वीकार की गयी। इन अभिलेखों के सन्दर्भ में याची पक्ष ने पत्रावली पर लिए जाने के सम्बन्ध में अनापत्ति पर लिए जाने के सम्बन्ध में अनापत्ति व्यक्त ही परन्तु यह अभिकथन किया कि अभिलेखों के सन्दर्भ में उन्हें साक्ष्य में संशोधित शपथ पत्र प्रस्तुत करना है जो स्वीकार किया गया। दिनांक 5.9.12 तक साक्ष्य में संशोधित शपथ पत्र प्रस्तुत करने के लिए तिथि नियत की गयी। प्रार्थी द्वारा आज तक साक्ष्य में संशोधित शपथ पत्र नहीं प्रस्तुत किया गया।

30. प्रार्थी द्वारा न तो विपक्ष द्वारा अभिलेखों की प्रस्तुति के बाद दिये गये समय में संशोधित शपथ पत्र साक्ष्य में प्रस्तुत किया गया न ही रिफरेन्स में संशोधन आदेश प्राप्त होने के बाद संशोधित शपथ पत्र साक्ष्य में प्रस्तुत किया गया ताकि प्रार्थी की प्रतिपरीक्षा प्रारम्भ हो सके।

31. दिनांक 24.8.15 से 28.12.16 तक याची निरन्तर अनुपस्थित रहा जो मुकदमें के प्रति उसकी उदासीनता को जाहिर करता है। दिनांक 31.5.16 को विपक्ष उपस्थित था एवं याची पक्ष अनुपस्थित था। न्यायाधिकरण द्वारा यह आदेश पारित किया गया कि संशोधित रिफरेन्स प्राप्त हो चुका है अतः पक्षकार अपने अभिवचनों में संशोधित रिफरेन्स के आधार पर कोई संशोधन करना चाहते हैं तो दिनांक 18.8.16 तक संशोधन प्रस्तुत करें परन्तु दिनांक 18.8.16 तथा अगली तिथि दिनांक 31.10.16 को भी दोनों पक्ष

अनुपस्थित रहे। दिनांक 31.10.16 को अगली तिथि 28.12.16 नियत की गयी और प्रार्थी की 24.8.15 से निरन्तर अनुपस्थिति को देखते हुए प्रार्थी के विरुद्ध दिनांक 28.12.16 को न्यायाधिकरण द्वारा नोटिस भेजने का आदेश पारित किया गया ताकि यह पता चल सके कि प्रार्थी मुकदमे की कार्यवाही में उपस्थित क्यों नहीं हो रहा है। दिनांक 28.12.16 को अगली तिथि प्रार्थी की उपस्थिति के लिए 10.1.17 नियत की गयी।

32. दिनांक 28.12.16 के आदेश से भेजी गयी नोटिस प्रार्थी के विरुद्ध व्यक्तिगत रूप से तामिल हुई जिसकी पावती पत्रावली पर है। दिनांक 10.1.17 को प्रार्थी व्यक्तिगत रूप से न्यायाधिकरण में उपस्थित आया प्रार्थी को पुनः आदिष्ट किया गया कि दिनांक 25.6.12 के आदेश के अनुपालन में प्रार्थी संशोधित शपथ पत्र प्रस्तुत करे ताकि उसकी प्रतिपरीक्षा हो सके। दिनांक 14.2.17 अगली तिथि नियत की गयी जिस दिन संशोधित शपथ पत्र प्रस्तुत होना था।

33. दिनांक 14.2.17 को उभयपक्ष अनुपस्थित रहे। प्रार्थी ने संशोधित शपथ पत्र नहीं प्रस्तुत किया न उपस्थित आया। पुनः न्यायाधिकरण द्वारा न्यायहित में दिनांक 14.2.17 की कार्यवाही स्थगित कर स्वतः प्रार्थी को पुनः अन्तिम अवसर प्रदान कर दिनांक 27.2.17 के अंतिरिक्त शपथ पत्र प्रस्तुत करने हेतु अवसर प्रदान किया गया।

34. दिनांक 27.2.17 को पुनः याची अनुपस्थित रहा अतः याची के साक्ष्य का अवसर समाप्त किया गया। विपक्ष के विद्वान प्रतिनिधि उपस्थित थे अतः दिनांक 21.3.17 विपक्ष के साक्ष्य हेतु अगली तिथि नियत की गयी। दिनांक 21.3.17 को उभयपक्ष अनुपस्थित थे अतः विपक्ष का साक्ष्य समाप्त करने हुए दिनांक 21.3.17 को निम्न आदेश पारित किया गया :—

“पुकार की गयी। उभयपक्ष अनुपस्थित है। न्यायालय की समय समाप्ति तक इन्तजार किया गया उभयपक्ष की तरफ से कोई उपस्थित नहीं आया। पत्रावली विपक्षी साक्ष्य में है। विपक्ष की तरफ से कोई साक्ष्य या मुल्तवी नहीं प्रस्तुत की गयी अतः विपक्ष का साक्ष्य समाप्त किया जाता है। याची ने अंतिरिक्त शपथ पत्र साक्ष्य में नहीं प्रस्तुत की है न प्रतिपरीक्षा करायी है। प्रार्थी की उदासीनता की स्थिति में पत्रावली एवार्ड हेतु आरक्षित की जाती है।”

35. उक्त समस्त तथ्य एवं परिस्थिति के अवलोकन से यह भलीभांति स्पष्ट है कि प्रार्थी को इस मामले में साक्ष्य प्रस्तुत कर मामले को निर्णित कराने में कोई रुचि नहीं है। प्रार्थी को पर्याप्त अवसर दिये जाने के बावजूद उसने अपनी याचिका के समर्थन में कोई साक्ष्य नहीं प्रस्तुत किया है न ही अपनी प्रतिपरीक्षा करायी है। अतः मैं इस निष्कर्ष पर हूँ कि प्रार्थी यह सिद्ध करने में असफल है कि पोस्ट ऑफिस झालावाड के सहायक अधीक्षक के प्रबन्धन द्वारा प्रार्थी की दिनांक 9.11.2000 से सेवासमाप्ति अनुचित एवं अवैधानिक है। तदनुसार याची किसी याचित अनुतोष को पाने का हकदार नहीं है। प्रार्थी की याचिका खारिज की जाती है। पंचाट तदनुसार पारित किया जाता है। श्रम मन्त्रालय द्वारा इस मामले में न्यायनिर्णयन हेतु प्रेषित रिफरेन्स का उत्तर तदनुसार दिया जाता है।

भरत पाण्डेय, पीठासीन अधिकारी

नई दिल्ली, 10 अगस्त, 2017

का.आ. 1910.——औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार साइट/निदेशक, राजस्थान परमाणु ऊर्जा स्टेशन, रावतभाटा, कोटा, राजस्थान एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 63/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.03.2017 को प्राप्त हुआ था।

[सं. एल-42011/37/2014-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 10th August, 2017

S.O. 1910.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 63/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in Annexure, in the industrial dispute between the employers in relation to the Site/Director, Rajasthan Atomic Power Station, Rawatbhata, Kota, Rajasthan and their workman, which were received by the Central Government on 31.03.2017.

[No. L-42011/37/2014-IR (DU)]

RAJENDRA JOSHI, Dy. Director

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

सी.जी.आई.टी. प्रकरण सं. 63/2014

भरत पाण्डेय, पीठासीन अधिकारी

रेफरेन्स नं. एल-42011/37/2014-आईआर (डीयू) दिनांक 11/08/2014

The General Secretary,
Parmanu Vidyut Karmachari Union (CITU)
(CITU) Union Office, Phase-2,
Rawatbhata (Kota)-323307,

v/s

The Site /Director,
Rajasthan Atomic Power Station,
Rawatbhata, PO Anushakti
Kota-(Rajasthan) 323303,

प्रार्थी की तरफ से : श्री जगदीश चन्द्र गुप्ता – एडवोकेट

अप्रार्थी की तरफ से : श्री धर्मेन्द्र जैन – एडवोकेट

पंचाट

दिनांक : 20.02.2017

1. केन्द्रीय सरकार द्वारा औद्योगिक विवाद अधिनियम 1947 की धारा 10 उपधारा 1 खण्ड (घ) के अन्तर्गत दिनांक 11/08/2014 के आदेश से प्रेषित विवाद के आधार पर यह प्रकरण न्यायनिर्णय हेतु संस्थित है। केन्द्रीय सरकार द्वारा प्रेषित विवाद निम्नवत् है :–

“क्या परमाणु विद्युत कर्मचारी यूनियन, रावतभाटा (राजस्थान) की स्थल निदेशक, राजस्थान परमाणु बिजलीघर, आर.ए.पी.पी. (आर.आर.साइट) रावतभाटा से श्री धनराज बुनकर, वार्ड-बॉय को ई.सी.जी. टैक्नीशियन के पद पर पदोन्नति की मांग न्यायोचित एवं तर्कसंगत है? यदि हां तो श्री धनराज बुनकर, वार्ड-बॉय किस राहत का एवं कब से अधिकारी है?”

2. स्टेटमेंट ऑफ क्लेम में दिये गये तथ्य के अनुसार प्रस्तरवार प्रार्थी यूनियन का कथन है कि :–

1. यूनियन इस प्रकरण से सम्बन्धित श्रमिक का प्रतिनिधित्व करती है एवं क्लेम प्रस्तुति हेतु अधिकृत है।
2. विपक्षी नियोजक संस्थान, न्युक्लीयर पॉवर कारपोरेशन लिमिटेड की एक इकाई है। न्युक्लीयर पॉवर कारपोरेशन, परमाणु उर्जा विभाग, भारत सरकार का उपकरण है तथा भारत के संविधान के अनुच्छेद 12 के अन्तर्गत “राज्य” की परिभाषा में आता है।
3. श्रमिक धनराज बुनकर की प्रारम्भिक नियुक्ति विपक्षी नियोजक संस्थान द्वारा संचालित अस्पताल में पत्र संख्या 207 दिनांक 15.5.1993 के द्वारा वार्ड-बॉय के पद पर नियत अवधि हेतु 750 रुपये प्रतिमाह के समेकित वेतन पर की गई थी तथा श्रमिक दिनांक 23.5.1994 तक कार्यरत रहा।
4. श्रमिक की विपक्षी नियोजक संस्थान में नियमित नियुक्ति दिनांक 2.1.95 से वार्ड-बॉय ‘ए’ के पद पर की गई। श्रमिक को दिनांक 1.5.2001 से वार्ड-बॉय, हैल्पर बी-सी के पद पर पदोन्नति दी गई एवं इसी कम में श्रमिक को दिनांक 1.5.2001 से हैल्पर ‘डी’ के पद पर पदोन्नति दी गई तथा अस्पताल कार्य सहायक बी के रूप में पदस्थापित किया गया।
5. श्रमिक श्री धनराज बुनकर एक परिश्रमी और उद्यमशील श्रमिक है अतः श्रमिक को उसके उत्कृष्ट कार्य, व्यवहार एवं वरिष्ठता के आधार पर सभी पदोन्नतियां दी गईं। श्रमिक अपने कार्य में ज्ञानवर्धन व कार्य क्षमता में बढ़ोत्तरी हेतु प्रयासरत रहता है। श्रमिक द्वारा स्वाध्याय से वर्ष 2007–2008 में अखिल भारतीय टैक्नोमेडिकल्स संस्थान, गाजियाबाद द्वारा आयोजित मेडिकल ‘ई.सी.जी. टैक्नालाजी’ परीक्षा उत्तीर्ण की गई। इस परीक्षा हेतु श्रमिक द्वारा विपक्षी नियोजक संस्थान से पूर्वानुमति ली गई। श्रमिक द्वारा स्वाध्याय व उद्यम से अर्जित तकनीकी योग्यता प्राप्त करने की सूचना विपक्षी नियोजक संस्थान को दी गई।
6. विपक्षी नियोजक संस्थान के अस्पताल में ‘ई.सी.जी. टैक्नीशियन’ पद रिक्त है। वर्ष 2009 में श्रमिक अपनी कार्य क्षमता एवं वरिष्ठता के आधार पर पदोन्नती का पात्र था। श्रमिक को आशा थी कि उसे उसकी योग्यता के आधार पर ‘ई.सी.जी. टैक्नीशियन’ के पद पर पहले से ही रिक्त स्थान पर पदोन्नति दी जायेगी किन्तु श्रमिक को पदोन्नति दिनांक 1.7.09 से अस्पताल कार्य सहायक के पद पर ही दी गई जबकि वह ‘ई.सी.जी. टैक्नीशियन’ पद पर पदस्थापन का पात्र है।
7. प्रार्थी यूनियन द्वारा इस सम्बन्ध में मांग किये जाने पर विपक्षी नियोजक संस्थान द्वारा यह कहा गया कि श्रमिक को परीक्षा हेतु अनुमति देने के साथ ही यह स्पष्ट कर दिया गया था कि अर्जित की गई योग्यता के आधार पर उन्हें पदोन्नति लाभों का दावा करने का कोई भी अधिकार नहीं होगा किन्तु साथ ही यह भी स्वीकार किया गया कि विपक्षी नियोजक संस्थान के पदोन्नति प्रतिमानों में वार्ड-बॉय से ‘ई.सी.जी. टैक्नीशियन’ के पद पर पदोन्नति का कोई प्रावधान नहीं था किन्तु अब मुख्यालय द्वारा इस सम्बन्ध में जारी आदेश दिनांक 24.6.13 पर विचार

किया जा रहा है जिसके अनुसार अस्पताल कार्य सहायक पद पर कार्यरत श्रमिकगण को टैक्नीशियन श्रेणी में पदोन्नति दिये जाने हेतु आवश्यक प्रक्रिया प्रारम्भ किये जाने के निर्देश दिये गये हैं।

यहाँ पर यह भी उल्लेख किया जाना प्रासंगिक है कि आदेश दिनांक 24.6.13 को इस टिप्पणी के साथ जारी किया गया है कि अस्पताल के कार्य सहायकों हेतु बहु आयामी निपुणता के विकास और पुनर्नियोजन सम्बन्धी दिशा निर्देशों में कोई प्रावधान नहीं था, जबकि अन्य सहायक श्रेणियों हेतु उपयुक्त प्रावधान अस्तित्व में था। इन सभी आयामों पर विचार कर सक्षम प्राधिकारी द्वारा अस्पताल कार्य सहायकों को भी प्रशिक्षण योजना सम्बन्धी दिशा निर्देश दिनांक 17.6.11 के अनुसार पदोन्नति पर सोच-विचार कर अवसर प्रदान करने हेतु संस्थीकृति प्रदान की गई है। इससे स्पष्ट है कि सक्षम प्राधिकारी द्वारा अस्पताल कार्य सहायकों हेतु कोई प्रशिक्षण/पदोन्नति योजना न होने की कमी की गम्भीरता को अनुभव किया गया और उसे दूर करने हेतु आदेश जारी किये गये।

8. उपरोक्त प्रस्तर 7 में वर्णित तथ्यों से स्पष्ट है कि अस्पताल कार्य सहायकों को पूर्व में प्रचलित प्रशिक्षण योजना सम्बन्धी दिशा निर्देशों के लाभों से वंचित रखे जाने की स्थिति को उचित और न्यायपूर्ण नहीं पाया गया और उन्हें भी इस योजना का लाभ दिये जाने हेतु आदेश जारी किये गये जिन पर विचार किया जा रहा है। इससे स्पष्ट है कि अस्पताल कार्य सहायकों को भी बहु आयामी निपुणता के विकास और पुनर्नियोजन/पदोन्नति का अवसर प्रदान किया जाना समुचित पाया गया।

प्रार्थी यूनियन द्वारा की गई मांग भी तथ्यात्मक रूप से सक्षम प्राधिकारी द्वारा जारी आदेशों पर विचार किये जाने का अनुरोध है। रिक्त स्थानों पर उपयुक्त तकनीकी योग्यता प्राप्त अस्पताल में कार्यरत कार्य सहायकों को पदोन्नती के अवसर दिये जाने पर सोच-विचार किया जाना न केवल सम्बन्धित कर्मचारियों के लिए हितकारी है अपितु संस्थान के विकास हेतु भी महत्वपूर्ण है। श्रमिक श्री धनराज बुनकर भी ऐसे अवसर पाने का पात्र है। अनुभवी और तकनीकी योग्यता प्राप्त श्रमिकों की क्षमताओं का उपयोग न केवल अस्पताल की कार्य क्षमता बढ़ाने में उपयोगी होगा अपितु अस्पताल के लाभार्थियों के लिए भी हितकर होगा।

9. यहाँ उल्लेख किया जाना भी उपयुक्त है कि आधुनिक प्रबन्धन की विकास अवधारणाओं के अनुसार कर्मचारियों को प्रगति/विकास के अवसर दिये जाने आवश्यक है तथा उन्हें ज्ञानवर्धन व कार्य क्षमता में बढ़ोत्तरी हेतु प्रेरित किया जाना भी महत्वपूर्ण है।

इन्ही अवधारणाओं के अनुरूप यह भी स्थापना है कि पदोन्नति हेतु सोच विचार (Consideration) के अवसर प्रदान किया जाना 'राज्य' सेवा में कार्यरत श्रमिकों का मूल अधिकार है। संविधान के अनुच्छेद 16(1) में वर्णित 'नियोजन' शब्द में पदोन्नति सम्बन्धी अवधारणा भी अन्तर्निहित है। समान अवसर का इस सन्दर्भ में अर्थ है कि जो भी कर्मचारी पदोन्नति का पात्र है और सोच विचार के परिमिणल (Zone of consideration) में आता है उसे पदोन्नति हेतु सोच विचार का अवसर पाने का मूल अधिकार है। यदि ऐसा अवसर पदोन्नति हेतु नहीं दिया जाता है तो यह निश्चित ही उसके मूल अधिकार का उल्लंघन है।

स्पष्ट है कि श्रमिक श्री धनराज बुनकर को पदोन्नति हेतु सोच विचार का अवसर ही प्रदान नहीं किया गया। अतः विपक्षी नियोजक की यह कार्यवाही संविधान के अनुच्छेद 16(1) के अन्तर्गत प्राप्त मूल अधिकार का उल्लंघन है और निरस्त किये जाने योग्य है।

10. विपक्षी नियोजक संस्थान के बहु आयामी निपुणता के विकास और पुनर्नियोजन संबंधी दिशा निर्देशों में अस्पताल के कार्य सहायकों के संबंध में प्रावधान नहीं किया जाना जबकि अन्य सहायक श्रेणियों हेतु उपयुक्त प्रावधान किये गये थे, अस्पताल के कार्य सहायकों जिसमें श्रमिक धनराज बुनकर भी सम्मिलित है, के साथ भेदभावपूर्ण और मनमानीपूर्ण व्यवहार है जो कि संविधान के अनुच्छेद 14 व 16 के अन्तर्गत प्राप्त विधि के समक्ष समानता, विधिक प्रावधानों से प्राप्त संरक्षण और राज्य सेवा में सभी नागरिकों को प्राप्त अवसरों की समानता के मूल अधिकार का उल्लंघन है तथा निरस्त किये जाने योग्य है। अन्त में प्रार्थना की गयी है कि श्री धनराज बुनकर, वार्ड-बॉय को ई.सी.जी. टैक्नीशियन के पद पर दिनांक 1.7.09 से पदोन्नति एवं पदोन्नति के परिणामी लाभ प्रदान करने का आदेश प्रदान किया जाए।

3. वादोत्तर में याचिका के प्रस्तर 1 ता 5 के कथन को स्वीकार किया गया है। प्रस्तर 6 ता 10 के कथन को अस्वीकार किया गया है। अतिरिक्त कथन में कहा गया है कि प्रार्थी की नियुक्ति वार्ड-बॉय के पद पर की गयी थी जिसे नियमानुसार सहायक "बी" के पद पर पदोन्नति दी गयी। प्रार्थी सन् 2009 में नियमानुसार नियुक्ति हेतु पात्र नहीं था परन्तु उसके बाद अस्पताल में कार्यरत सहायक कर्मचारियों को ट्रेनिंग किये जाने के आधार पर उनका ट्रेक बदलने की योजना लागू की गयी। इस योजना के अनुसार प्रार्थी की स्कीनिंग करने के बाद उसे प्रशिक्षण दिया गया। इस प्रशिक्षण को सफलतापूर्वक प्रार्थी द्वारा पूरा करने के बाद आदेश दिनांक 30.6.15 द्वारा उसे टैक्नीशियन 'बी' एक्सरे टैक्नीशियन के पद पर नियुक्ति दी गयी जिसे प्रार्थी ने बिना विरोध स्वीकार कर लिया है। आगे यह कहा गया है कि विधि का यह सुस्थापित सिद्धान्त है कि केवल पद रिक्त होने तथा कर्मचारी के पास योग्यता होने के आधार पर उसे पदोन्नति नहीं दी जा सकती।

4. आगे कथन है कि यूनियन की मांग नियमानुसार न होने के कारण नहीं मानी गयी एवं जब नियमों में संशोधन हुआ इसके बाद ही 30.6.15 के आदेश द्वारा नियुक्ति दी गयी। प्रार्थी के साथ कोई भेदभाव अथवा मनमानी व्यवहार नहीं किया गया

जो संविधान के अनुच्छेद 14 व 16 के विपरीत हो। समस्त कार्यवाही संस्थान के सेवा नियमों के अनुसार की गयी है, अतः याचिका हर्जा सहित खारिज की जाए।

5. दिनांक 25.1.17 को पत्रावली में जवाब प्रस्तुत किया गया। न्यायाधिकरण द्वारा पत्रावली पहले से दिनांक 25.1.17 को सुलह हेतु नियत की गयी थी परन्तु प्रयास के बावजूद सुलह न हो सकी। वादोत्तर के कथन में प्रार्थी को पदोन्नति 30.6.15 से दी गयी थी परन्तु प्रार्थी पक्ष की याचिका में दिनांक 1.7.09 से पदोन्नति माँगने के कारण सुलह न हो सकी। याची भी व्यक्तिगत रूप से उपस्थित नहीं आया। याची के विद्वान प्रतिनिधि ने समय की मांग की। न्यायाधिकरण द्वारा पुनः पत्रावली को फरवरी माह की लोक अदालत में रखने के लिए आदेश पारित किया गया ताकि प्रार्थी की सहमति की जानकारी प्राप्त हो सके। दिनांक 15.2.17 को पत्रावली रिज्यायन्डर एवं दस्तावेज याची तथा सुलह के प्रयास हेतु नियत की गयी। दिनांक 15.2.17 को याची पक्ष द्वारा रिज्यायन्डर एवं दस्तावेज नहीं प्रस्तुत किया गया एवं विपक्ष अनुपस्थित रहा। सुलह के प्रयास हेतु पत्रावली पुनः दिनांक 20.2.17 को लोक अदालत में नियत की गयी।

6. दिनांक 20.2.17 को पत्रावली लोक अदालत में प्रस्तुत हुई। उभयपक्ष के विद्वान प्रतिनिधि सुलह पर सहमत हुए। विपक्ष की तरफ से श्री के.जी.चन्द्रशेखरन, डी.जी.एम. उपस्थित आये। उभयपक्ष के विद्वान प्रतिनिधि ने सुलहनामा प्रस्तुत किया जो निम्नवत् है:-

BEFORE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JAIPUR

I.D. 63/2014

(Ref. No. L-42011/37/2014-IR(DU) dated : 11.8.2014

The General Secretary
Parmanu Vidyut karmachari Union (CITU)
CITU Union Office, Phase-2,
Rawatbhata(Kota)-323307.

V/s

The Site Director
Rajasthan Atomic Power Station
Rawatbhata, PO Anushakti,
Kota (Rajasthan)- 323303.

Lok- Adalat

Dated :20.2.2017

In the above mentioned case it is respectfully submitted that case between the parties has been amicably settled and there is no dispute pending between the parties to be decided. Applicant has been promoted to the post of Technician-B, X-ray Technician ECG.

It is, therefore, most humbly requested that case may be disposed in Lok-Adalat today on 20.2.2017.

(signature illegible in hindi)
Representative of opposite party
(Sh. Dharmendra Jain)

(signature legible in hindi)
Representative of Applicant
(Sh. Jagdish Gupta)

(signature illegible)
(K.G.Chandrasekharan)
DGM(HR)

7. लोक अदालत में पत्रावली को निस्तारित करते हुए निम्न आदेश पारित किया गया:-

20.2.17 लोक अदालत

आज पत्रावली लोक अदालत में प्रस्तुत हुई। याची के विद्वान प्रतिनिधि श्री जगदीश गुप्ता, एडवोकेट, तथा विपक्ष के विद्वान प्रतिनिधि श्री धर्मन्द जैन, एडवोकेट, तथा विपक्ष के श्री के.जी.चन्द्रशेखरन, डी.जी.एम. (एच.आर.) उपस्थित आये। याची पक्ष की तरफ से सुलहनामा जरिये विद्वान प्रतिनिधि याची, विपक्षी प्रतिनिधि के साथ संयुक्त रूप में प्रस्तुत हुआ। सुलह की शर्त उभयपक्ष को सुनायी एवं समझायी गयी। सुलहनामा स्वेच्छया प्रस्तुत हुआ पाया गया। सुलहनामा की तसदीक पक्षकारों ने की है।

इस मामले को तदनुसार उभयपक्ष की तरफ से प्रस्तुत सुलहनामे के आधार पर निस्तारित किया जाता है। सुलहनामा दिनांकित 20.2.17 एवार्ड का अंश होगा।

हस्ताक्षर अपठनीय
(पीठासीन अधिकारी)

8. न्यायनिर्णयन हेतु प्रेषित निर्देश का उत्तर उक्त प्रकार दिया जाता है। पंचाट तदनुसार पारित किया जाता है।

भरत पाण्डेय, पीठासीन अधिकारी

नई दिल्ली, 10 अगस्त, 2017

का.आ. 1911.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दूरसंचार जिला प्रबंधक, कवारत्ती एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण एवं त्रम न्यायालय, एर्नाकुलम के पंचाट (संदर्भ संख्या 15/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 21.07.2017 को प्राप्त हुआ था।

[सं. एल-40012/07/2015-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 10th August, 2017

S.O. 1911.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 15/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam as shown in Annexure, in the industrial dispute between the employers in relation to the Telecom District Manager, Kavaratty and their workmen, which were received by the Central Government on 21.07.2017.

[No. L-40012/07/2015-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present: Shri.K. Sasidharan, B.Sc., LLB, Presiding Officer

(Friday the 30th day of June, 2017/09th Ashadha, 1939)

ID 15/2015

Workman : Shri. K. A. Subrahmanian,
Kallumattam Veedu,
Iringol PO,
Perumbavur,
Kerala – 683 543.

(In Person)

Management : The Telecom District Manager,
Kavaratty – 682 555.

By Adv. Shri. K. M. Jamaludheen

This case coming up for final hearing on 08.06.2017 and this Tribunal-cum-Labour Court on 30.06.2017 passed the following:

AWARD

This is a reference under sub-section (1) (d) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (Act 14 of 1947).

2. The dispute referred for adjudication is:

'Whether the action of management of BSNL, Kavarathi in not regularising the services of Shri. K. A. Subramanian for no fault of his, is justified? If not what relief the workman is eligible?'

3. After receipt of the reference Order No. L-40012/07/2015-IR(DU) dated 13.03.2015 issued by the Ministry of Labour, Government of India, summons was issued to the parties to appear, submit pleadings, produce documents and adduce evidence to substantiate their respective contentions. On receipt of the summons the workman appeared in person and the management appeared through counsel.

4. The contentions in the claim statement filed by the workman in brief are as follows:-

The workman is from Scheduled Caste Community and belongs to the poor strata of the society. The workman is doing coolie work and earns his livelihood. He finds it difficult to make both ends meet from and out of the meagre income obtained from the coolie work.

5. From the year 1988 till the end of 1995, the workman was employed as casual labourer in the Telecommunication department (presently BSNL) in Kavarathi Island. While so the father of the workman was bedridden and he had to return and remain at the native place to nurse and provide proper treatment to him. While so there was an order from the department to regularize the casual workers in the permanent vacancy. After obtaining information about the same, the workman contacted the office of the Assistant Engineer (Wireless), Kavarathi and as directed by them he sent all the required documents and certificates by post to that office. It was informed from that office that they received the certificates and that they would inform about the same in future.

6. In the meantime the father of the workman expired and he could not return to the Island and report before the Assistant Engineer(W), Kavarathi. Even though the workman repeatedly requested before the Assistant Engineer(W) to inform the stage of regularization, he has not received any communication in this regard. Recent enquiry by the workman revealed that the certificates submitted by him before the Lakshadweep office were missing. So far he has not received any communication in this regard. The workman has lost his employment at Lakshadweep. Thereafter he was working as daily wage worker at the Odakkali Telephone Exchange. The income obtained by the workman from that employment was not sufficient enough to meet his livelihood. Hence he is now employed in building construction sector.

7. Therefore the workman has requested to pass an award directing the management to reinstate him in service and to grant all other incidental reliefs thereof.

8. The contentions in the written statement filed by the management in brief are as follows:-

The management has denied all the averments in the claim statement filed by the workman except those that are specifically admitted. This case is filed after a lapse of 20 years from the date of the alleged denial of employment. The workman has approached before this Tribunal without stating the true facts and it is filed as a test case to cause hardship and inconvenience to the management. The case of the workman was considered by the management and it was rejected for the reason that he failed to produce necessary documents to prove his employment/engagement by the management. This happened in the year 1995. In response to the letter dated 07.03.1995 for the empanelment of ex-casual labourers, the workman submitted application. The committee constituted in the office of the then Telecom District Manager, Lakshadweep, Kavarathi found that he was not eligible since he failed to produce valid proof in support of his claims. Hence, the committee consisting of Shri. C. K. Hariharan, Telecom District Manager, Kavarathi, Shri. K. T. George Kutty, Accounts Officer, Kavarathi and Shri. K. Radhakrishnan, Sub-Divisional Engineer (Wireless), Kavarathi unanimously rejected the application for empanelment.

9. The contention of the workman that he was employed in the Telecommunication Department, Kavarathi, from 1988 to 1995 is denied by the management. They have called upon the workman to prove the same.

10. Even as per the contentions of the workman he was employed elsewhere and earning wages. Hence he has filed this case as a test case. His contentions in the petition filed before the Assistant Labour Commissioner(Central) and contentions in the claim statement filed before this Court are entirely different from each other. Hence the management has requested to reject the claim of the workman.

11. After filing written statement by the management, the workman filed rejoinder, reiterating the contentions in the claim statement.

12. After affording both parties to take steps and for production of documents, the matter was posted for evidence. The workman has not adduced any oral evidence or produced documents to substantiate his contentions. On behalf of the management no oral evidence has been adduced. Exts.M1 and M2 are the documents marked on their behalf. Heard both sides.

13. The points arising for consideration are:

- “(i) **Whether the workman Shri. K. A. Subramanian was employed as a ‘casual labourer’ in the Telecommunication department of the management in Kavarathi Island for the period from 1988 till the end of 1995?**
- “(ii) **Whether the workman is entitled to be regularized in the services under the management as claimed by him?**
- “(iii) **To what relief the workman is entitled?”**

14. **Point Nos. (i) & (ii) :-** The contention of the workman is that he was employed as a casual labourer in the Telecommunication department (presently BSNL) in Kavarathi Island for the period from 1988 till the end of 1995. He has stated that he could not continue his casual employment for the reason that he had to return to his native place to nurse his ailing father. His further contention is that he has submitted application with all necessary documents for regularization before the Assistant Engineer(Wireless), Kavarathi requesting to regularize him in services. He has stated that his request was declined by the competent authorities without valid reason. He would further state that he could not return to the Lakshadweep Island due to denial of permission by the competent authorities. Hence he has requested to regularize him in service and grant all incidental reliefs thereof.

15. The management has totally denied his claim. They have stated that even as per the contention of the workman, the alleged denial of the employment was in the year 1995 and he has initiated the proceedings after a lapse of 20 years. They have denied the contention of the workman that he was employed under them from the year 1988 to 1995. They have called upon the workman to prove the same.

16. Ext.M1 is the copy of the Minutes dated 23.06.1995, passed by the Committee for empanelment of ex-casual labourers. The decision of the committee is to the effect that the workman failed to produce valid proof/documents in support of his claim and hence rejected the claim.

17. In this case, even though the workman has contended that he was employed as a casual labourer in the Telecommunication department (presently BSNL), Kavarathi Island from the year 1988 till the end of 1995, there is no oral or documentary evidence to substantiate the same. In the absence of any evidence to prove the employment of the workman as a casual labourer in the Telecommunication department of the management, it will not be just or reasonable to consider and allow his request. Therefore it is held that the workman failed to prove that he was employed under the management at any point of time. It follows that the workman is not entitled to any relief as per this reference. Hence the points are answered against the workman.

18. **Point No. (iii):-** In view of the findings on point Nos. (i) & (ii), the workman is not entitled to the relief claimed. The point is answered accordingly.

19. In the result an award is passed holding that the workman is not entitled to get any relief as per this reference.

The award will come into force one month after its publication in the Official Gazette.

Pronounced by me in the Open Court on this the 30th day of June, 2017.

SASIDHARAN K., Presiding Officer

APPENDIX

Witness for the workman NIL

Witness for the management NIL

Exhibits for the workman NIL

Exhibits for the management NIL

M1 - Attested copy of the Minutes of the committee meeting held on 23.06.1995 in the Office of the Telecom District Manager, Lakshadweep, Kavaratti for empanelment of ex-casual labourers.

M2 - True copy of the Order No.TDM/X-II/2008-09/3 dated 05.11.2009 issued by the Telecom District Manager, BSNL, Kavarathi to Smt. C. P. Hajiromma, Chettupura House, Kavarathy. P. O.

नई दिल्ली, 10 अगस्त, 2017

का.आ. 1912.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार परियोजना निदेशक, राष्ट्रीय राजमार्ग प्राधिकरण, चंद्रनगर, पलक्कड़ व अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, एर्नाकुलम के पंचाट (संदर्भ संख्या 50/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.06.2017 को प्राप्त हुआ था।

[सं. एल-42025/03/2017-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 10th August, 2017

S.O. 1912.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 50/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam as shown in Annexure, in the industrial dispute between the employers in relation to the Project Director, National Highway Authority of India, Chandranagar, Palakkad & Others and their workman, which were received by the Central Government on 13.06.2017.

[No. L-42025/03/2017-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present: Shri.K. Sasidharan, B.Sc., LLB, Presiding Officer

(Thursday the 25th day of May, 2017/04th Jyaistha, 1939)

ID 50/2013

Workman/Applicant : Shri N. Ramana Reddy,
S/o Shri Venkata Reddy,
Balayappalli, Ganganapalli Post 516 217,
Kasinayana Mandal, Kadappa District,
Andhra Pradesh.

By Adv. Shri Ashok. B. Shenoy

Managements : 1. The Project Director,
National Highway Authority of India,
Project Office, NHAI, Chandranagar,
Palakkad – 678 007.

By Adv. Shri. Thomas Antony

2. The Chief Project Manager,
KMC Constructions Limited, NH 47 Project,
Behind Appollo Tyres, Perambra Post,
Thrissur – 680 689.

Additional Managements : 3. M/s. Guruvayoor Infrastructures Private Limited,
Registered Office,
Door No.1-80/40/SP/58-65,
Shilpa Homes Layout Gachibowli,
Hyderabad – 500 032,
Andhra Pradesh.

(Impleaded as Additional Management vide Order
dated 11.05.2016 in IA No.111/2014)

4. M/s.Thrissur Expressway Ltd.,
NH 47 Project,
Perambra P.O.,
Thrissur District – 680 689.

(Impleaded as Additional Management vide Order dated 11.05.2016 in IA No.4/2016)

By M/s. Jomy George & Associates
(for Management No.2 and Addl. Management Nos. 3 & 4)

This case coming up for final hearing on 25.05.2017 and this Tribunal-cum-Labour Court on the same day passed the following:

AWARD

This is an application filed by the workman under Section 2A(2) of the Industrial Disputes Act, 1947.

2. Matter was taken up for consideration in the Lok Adalath today. Matter settled between the workman on the one hand and the management Nos. (1) & (2) on the other. Joint statement filed and compromise recorded.
3. Hence an award is passed in accordance with the terms and conditions in the joint statement. The joint statement shall form part of the award.
4. The second management is directed to produce before this Tribunal a banker's cheque for the sum of ₹ 1,50,000/- (Rupees One lakh and fifty thousand only) in the name of the workman – Shri. N. Ramana Reddy, in full and final settlement of the claims as per this ID. The cheque shall be produced within one month from the date of receipt of the copy of the Award, failing which the workman is at liberty to execute the award in accordance with law.
5. On production of the cheque as aforesaid, it shall be handed over to the workman after obtaining proper acknowledgement.
6. Office is directed to hand over copy of the award to the parties as per Rule.

The Award will come into force one month after its publication in the Official Gazette.

Pronounced by me in the Open Court on this the 25th day of May, 2017.

K. SASIDHARAN, Presiding Officer

APPENDIX - NIL

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM ID No. 50/2013

Shri N. Ramana Reddy,
S/o Venkata Reddy,
Balayappalli, Ganganapalli Post,
516 217, Kasinayana Mandal,
Kadappa District,
Andhra Pradesh

...Workman

Vs.

1. The Project Director,
National Highway Authority of India,
Project Office, NHAI,
Chandranagar,
Palakkad-678 007.
2. The Chief Project Manager,
KMC Constructions Limited,
NH 47 Project, Behind Apollo Tyres,
Perambra Post,
Trissur-680 689

...Managements

The matter was taken up Lok Adalat between the workman and the 1st and 2nd Managements, the parties agreed to settle the dispute on the following terms:-

- 1) The second management hereby agreed to pay a sum of Rs. 1,50,000/- (Rupees One lakh fifty thousand only), to the workman in full and final settlement of all the claims in ID No. 50/2013 between the workman and the Managements.

2) Upon receiving the said amount, the workman in ID 50/2013 will not have any further monetary claim or claim for employment against the Managements in connection with his employment under the Managements in relation to the matter in dispute in this case.

3) A Banker's Cheque for Rs. 1,50,000/- (Rupees One lakh fifty thousand only), favouring Shri. N. Ramana Reddy drawn on Axis Bank will be produced by the second managements before this Tribunal within 45 days (forty five days) and it shall be handed over to the workman towards full and final settlement of all claims of the workman in I.D. No.50/2013.

Dated this the 4th day of May, 2017.

Workman : Sd/-

Ind Management : Sd/-

Counsel for workman : Sd/-

Counsel for Management : Sd/-

Sd/- Mediator

नई दिल्ली, 10 अगस्त, 2017

का.आ. 1913.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार परियोजना निदेशक, राष्ट्रीय राजमार्ग प्राधिकरण, चंद्रनगर, पलकड़ व अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, एर्नाकुलम के पंचाट (संदर्भ संख्या 51/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.06.2017 को प्राप्त हुआ था।

[सं. एल-42025/03/2017-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 10th August, 2017

S.O. 1913.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 51/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam as shown in Annexure, in the industrial dispute between the employers in relation to the Project Director, National Highway Authority of India, Chandranagar, Palakkad & Others and their workman, which were received by the Central Government on 13.06.2017.

[No. L-42025/03/2017-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present: Shri.K. Sasidharan, B.Sc., LLB, Presiding Officer

(Thursday the 25th day of May, 2017/04th Jyaistha, 1939)

ID 51/2013

Workman/Applicant : Shri D. Ramesh Reddy,
S/o Shri Easwar Reddy,
House No. 10/486-1, Vasavi Nagar (Raju Mill),
Railway Kodur, Kadappa District-516201,
Andhra Pradesh.

By Adv. Shri Ashok. B. Shenoy

Managements : 1. The Project Director,
National Highway Authority of India,
Project Office, NHAI, Chandranagar,
Palakkad – 678 007.

By Adv. Shri Thomas Antony

2. The Chief Project Manager,
KMC Constructions Limited, NH 47 Project,

Additional Managements	:	Behind Appollo Tyres, Perambra Post, Thrissur – 680 689.
		<p>3. M/s.Guruvayoor Infrastructures Private Limited, Registered Office, Door No.1-80/40/SP/58-65, Shilpa Homes Layout Gachibowli, Hyderabad – 500 032, Andhra Pradesh.</p> <p>(Impleaded as Additional Management vide Order dated 11.05.2016 in IA No.111/2014)</p> <p>4. M/s.Thrissur Expressway Ltd., NH 47 Project, Perambra P.O., Thrissur District – 680 689.</p> <p>(Impleaded as Additional Management vide Order dated 11.05.2016 in IA No.4/2016)</p>
		<p>By M/s. Jomy George & Associates (for Management No.2 and Addl. Management Nos. 3 & 4)</p>

This case coming up for final hearing on 25.05.2017 and this Tribunal-cum-Labour Court on the same day passed the following:

AWARD

This is an application filed by the workman under Section 2A(2) of the Industrial Disputes Act, 1947.

2. Matter was taken up for consideration in the Lok Adalath today. Matter settled between the workman on the one hand and the management Nos.(1) & (2) on the other. Joint statement filed and compromise recorded.
3. Hence an award is passed in accordance with the terms and conditions in the joint statement. The joint statement shall form part of the award.
4. The second management is directed to produce before this Tribunal a banker's cheque for the sum of ₹47,000/- (Rupees Forty seven thousand only) in the name of the workman – Shri. D. Ramesh Reddy, in full and final settlement of the claims as per this ID. The cheque shall be produced within one month from the date of receipt of the copy of the Award, failing which the workman is at liberty to execute the award in accordance with law.
5. On production of the cheque as aforesaid, it shall be handed over to the workman after obtaining proper acknowledgement.
6. Office is directed to hand over copy of the award to the parties as per Rule.

The Award will come into force one month after its publication in the Official Gazette.

Pronounced by me in the Open Court on this the 25th day of May, 2017.

K. SASIDHARAN, Presiding Officer

APPENDIX - NIL

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

ID No. 51/2013

Shri D. Remesh Reddy,
Son of Easwar Reddy,
House No.10/486-1, Vasavi Nagar,
(Raju Mill), Railway Kodur
Kadappa District, Andhra Pradesh.

...Workman

Vs.

1. The Project Director,
National Highway Authority of India,
Project Office, NHAI,
Chandranagar,
Palakkad-678 007.

2. The Chief Project Manager,
KMC Constructions Limited,
NH 47 Project, Behind Apollo Tyres,
Perambra Post,
Trissur-680 689

...Managements

The matter was taken up Lok Adalat between the workman and the 1st and 2nd Managements, the parties agreed to settle the dispute on the following terms:-

- 1) The second management hereby agreed to pay a sum of Rs. 47,000/- (Rupees Forty seven thousand only) to the workman in full and final settlement of all the claims in ID 51/2013 between the workman and the Managements.
- 2) Upon receiving the said amount, the workman in ID 51/2013 will not have any further monetary claim or claim for employment against the Managements in connection with his employment under the Managements in relation to the matter in dispute in this case.
- 3) A Banker's Cheque for Rs. 47,000/- (Rupees Forty Seven thousand only) favouring Shri. D. Remesh Reddy drawn on Axis Bank will be produced by the second management before this Tribunal within 45 days (Forty Five days) and shall be handed over to the workman toward full and final settlement of all claims of workman in I.D.No.51/2013.

Dated this the 4th day of may, 2017.

Workman : Sd/-

IIInd Management : Sd/-

Counsel for workman : Sd/-

Counsel for Management : Sd/-

Sd/- Mediator

नई दिल्ली, 10 अगस्त, 2017

का.आ. 1914.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार परियोजना निदेशक, राष्ट्रीय राजमार्ग प्राधिकरण, चंद्रनगर, पलक्कड़ व अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, एर्नाकुलम के पंचाट (संदर्भ संख्या 52/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.06.2017 को प्राप्त हुआ था।

[सं. एल-42025/03/2017-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 10th August, 2017

S.O. 1914.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 52/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam as shown in Annexure, in the industrial dispute between the employers in relation to the Project Director, National Highway Authority of India, Chandranagar, Palakkad & Others and their workman, which were received by the Central Government on 13.06.2017.

[No. L-42025/03/2017-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present: Shri.K. Sasidharan, B.Sc., LLB, Presiding Officer

(Thursday the 25th day of May, 2017/04th Jyaistha, 1939)

ID 52/2013

Workman/Applicant	:	Shri Ganesh Kundo, S/o Shri Bhart Kundu, Bijaya Lakshmi Narayanpur, Nuvakada (Via), Ganjam District-761011, Odissa.
		By Adv. Shri Ashok. B. Shenoy
Managements	:	<p>1. The Project Director, National Highway Authority of India, Project Office, NHAI, Chandranagar, Palakkad – 678 007.</p> <p>2. The Chief Project Manager, KMC Constructions Limited, NH 47 Project, Behind Appollo Tyres, Perambra Post, Thrissur – 680 689.</p>
Additional Managements	:	<p>3. M/s.Guruvayoor Infrastructures Private Limited, Registered Office, Door No.1-80/40/SP/58-65, Shilpa Homes Layout Gachibowli, Hyderabad – 500 032, Andhra Pradesh.</p> <p>(Impleaded as Additional Management vide Order dated 11.05.2016 in IA No.111/2014)</p> <p>4. M/s.Thrissur Expressway Ltd., NH 47 Project, Perambra P.O., Thrissur District – 680 689.</p> <p>(Impleaded as Additional Management vide Order dated 11.05.2016 in IA No.4/2016)</p>

By M/s. Jomy George & Associates
(for Management No.2 and Addl. Management Nos. 3 & 4)

This case coming up for final hearing on 25.05.2017 and this Tribunal-cum-Labour Court on the same day passed the following:

AWARD

This is an application filed by the workman under Section 2A(2) of the Industrial Disputes Act, 1947.

2. Matter was taken up for consideration in the Lok Adalath today. Matter settled between the workman on the one hand and the management Nos.(1) & (2) on the other. Joint statement filed and compromise recorded.
3. Hence an award is passed in accordance with the terms and conditions in the joint statement. The joint statement shall form part of the award.
4. The second management is directed to produce before this Tribunal a banker's cheque for the sum of ₹ 25,000/- (Rupees Twenty five thousand only) in the name of the workman – Shri. Ganesh Kundo, in full and final settlement of the claims as per this ID. The cheque shall be produced within one month from the date of receipt of the copy of the Award, failing which the workman is at liberty to execute the award in accordance with law.
5. On production of the cheque as aforesaid, it shall be handed over to the workman after obtaining proper acknowledgement.
6. Office is directed to hand over copy of the award to the parties as per Rule.

The Award will come into force one month after its publication in the Official Gazette.

Pronounced by me in the Open Court on this the 25th day of May, 2017.

K. SASIDHARAN, Presiding Officer

APPENDIX - NIL

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM
ID No. 52/2013

Shri. Ganesh Kundo,
 Son of Bhart Kundu,
 Bijaya Lakshmi Narayanpur,
 Nuvakada (Via),
 Ganjam District - 761 011
 Odissa

...Workman

Vs.

1. The Project Director,
 National Highway Authority of India,
 Project Office, NHAI,
 Chandranagar,
 Palakkad - 678 007
2. The Chief Project Manager,
 KMC Construction Limited,
 NH 47 Project, Behind Apollo Tyres,
 Perambra Post,
 Thrissur-680 689

...Managements

The matter was taken up in Lok Adalat between the workman and the 1st and 2nd Managements, the parties agreed to settle the dispute on the following terms:-

- 1) The second management hereby agreed to pay a sum of Rs. 25,000/- (Rupees Twenty five thousand only) to the workman in full and final settlement of all the claims in ID 52/2013 between the workman and the Managements.
- 2) Upon receiving the said amount, the workman in ID 52/2013 will not have any further monetary claim or claim for employment against the Managements in connection with his employment under the Managements in relation to the matter in dispute in this case.
- 3) A Banker's Cheque for Rs. 25,000/- (Rupees Twenty five thousand only) favouring Shri. Ganesh Kundo drawn on Axis Bank will be produced by the second management before this Tribunal within 45 days (Forty five days) and it shall be handed over to the workman towards full and final settlement of all claims of the workman in I.D. No.52/2013.

Dated this the 4th day of May, 2017.

Workman : Sd/-

IIInd Management : Sd/-

Counsel for workman : Sd/-

Counsel for Management : Sd/-

Sd/- Mediator

नई सिल्ली, 10 अगस्त, 2017

का.आ. 1915.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार परियोजना निदेशक, राष्ट्रीय राजमार्ग प्राधिकरण, चंद्रनगर, पलककड़ व अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, एनाकुलम के पंचाट (संदर्भ संख्या 53/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.06.2017 को प्राप्त हुआ था।

[सं. एल-42025/03/2017-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 10th August, 2017

S.O. 1915.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 53/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam as shown in Annexure, in the industrial dispute between the employers in relation to the Project Director, National Highway Authority of India, Chandranagar, Palakkad & Others and their workman, which were received by the Central Government on 13.06.2017.

[No. L-42025/03/2017-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present: Shri.K. Sasidharan, B.Sc., LLB, Presiding Officer

(Thursday the 25th day of May, 2017/04th Jyaistha, 1939)

ID 53/2013

Workman/Applicant	:	Shri S. K. Jilani, S/o Shri S. K. Raheem, House No.5-1-235, Sivanagar, Bedwel Post Mandalam, Kadappa District – 516 227, Andhra Pradesh. By Adv. Shri Ashok. B. Shenoy
Managements	:	1. The Project Director, National Highway Authority of India, Project Office, NHAI, Chandranagar, Palakkad – 678 007. By Adv. Shri Thomas Antony
Additional Managements	:	2. The Chief Project Manager, KMC Constructions Limited, NH 47 Project, Behind Appollo Tyres, Perambra Post, Thrissur – 680 689. 3. M/s.Guruvayoor Infrastructures Private Limited, Registered Office, Door No.1-80/40/SP/58-65, Shilpa Homes Layout Gachibowli, Hyderabad – 500 032, Andhra Pradesh. (Impleaded as Additional Management vide Order dated 11.05.2016 in IA No.111/2014)
		4. M/s.Thrissur Expressway Ltd., NH 47 Project, Perambra P.O., Thrissur District – 680 689. (Impleaded as Additional Management vide Order dated 11.05.2016 in IA No.4/2016)
		By M/s. Jomy George & Associates (for Management No.2 and Addl. Management Nos. 3 & 4)

This case coming up for final hearing on 25.05.2017 and this Tribunal-cum-Labour Court on the same day passed the following:

AWARD

This is an application filed by the workman under Section 2A(2) of the Industrial Disputes Act, 1947.

2. Matter was taken up for consideration in the Lok Adalath today. Matter settled between the workman on the one hand and the management Nos.(1) & (2) on the other. Joint statement filed and compromise recorded.

3. Hence an award is passed in accordance with the terms and conditions in the joint statement. The joint statement shall form part of the award.

4. The second management is directed to produce before this Tribunal a banker's cheque for the sum of ₹70,000/- (Rupees Seventy thousand only) in the name of the workman – Shri. S. K. Jilani, in full and final settlement of the claims as per this ID. The cheque shall be produced within one month from the date of receipt of the copy of the Award, failing which the workman is at liberty to execute the award in accordance with law.

5. On production of the banker's cheque as aforesaid, it shall be handed over to the workman after obtaining proper acknowledgement.

6. Office is directed to hand over copy of the award to the parties as per Rule.

The Award will come into force one month after its publication in the Official Gazette.

Pronounced by me in the Open Court on this the 25th day of May, 2017.

K. SASIDHARAN, Presiding Officer

APPENDIX - NIL

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM
ID No.53/2013

Shri.S.K. Jilani,
 Son of S.K. Raheem,
 House No. 5-1-235, Shivanagar,
 Badwel Post Mandalam,
 Kadapaa District – 516 227
 Andhra Pradesh

...Workman

Vs.

1. The Project Director,
 National Highway Authority of India,
 Project Office, NHAI,
 Chandranagar,
 Palakkad - 678 007.

2. The Chief Project Manager,
 KMC Constructions Limited,
 NH 47 Project, Behind Apollo Tyres,
 Perambra Post,
 Thrissur-680 689

...Managements

The matter was taken up in Lok Adalat between the workman and the 1st and 2nd Managements, the parties agreed to settle the dispute on the following terms:-

- 1) The second management hereby agreed to pay a sum of Rs. 70,000/- (Rupees Seventy thousand only), to the workman in full and final settlement of all the claims in ID 53/2013 between the workman and the Managements.
- 2) Upon receiving the said amount, the workman in ID 53/2013 will not have any further monetary claim or claim for employment against the Managements in connection with his employment under the Management in relation to the matter in dispute in this case.
- 3) A Banker's Cheque for Rs.70,000/- (Rupees Seventy thousand only) favouring Shri S.K.Jilani drawn on Axis Bank will be produced by the second management before this Tribunal within 45 days (Forty five days) and it shall be handed over to the workman towards full and final settlement of all claims of the workman in I.D. No. 53/2013.

Dated this the 4th day of May, 2017.

Workman : Sd/-

Ind Management : Sd/-

Counsel for workman : Sd/-

Counsel for Management : Sd/-

Sd/- Mediator

नई दिल्ली, 10 अगस्त, 2017

का.आ. 1916.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उप महाप्रबंधक, बीईएमएल लिमिटेड, बैंगलोर काम्प्लेक्स, बैंगलोर एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 08/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30.06.2017 को प्राप्त हुआ था।

[सं. एल-42025/03/2017-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 10th August, 2017

S.O. 1916.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 08/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in Annexure, in the industrial dispute between the employers in relation to the Deputy General Manager, BEML Limited, Bangalore Complex, Bangalore and their workman, which were received by the Central Government on 30.06.2017.

[No. L-42025/03/2017-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIUBNAL-CUM-LABOUR COURT, BANGALORE

DATED : 19th MAY, 2017

PRESENT : Shri V. S. RAVI, Presiding Officer

I.D. No. 08/2011

I Party

Sh. E. Ramakrishnappa,
S/o Erappa,
No. 63, Balagere Village,
Varthur Hobli, Panathur Post,
Bangalore – 560087

Advocate for I Party : Mr. Muralidhara

II Party

The Deputy General Manager,
BEML Limited,
Bangalore Complex,
P B No. 7501,
Bangalore – 560075

AWARD

1. Brief details mentioned in the Amended Claim Statement are as follows:-

The I Party states that, he is aggrieved by the order of removal passed by the Deputy General Manager, BEML Limited by his office order dated 25.02.2011 and communicated by the Assistant General Manager HR BEML Limited, Bangalore Complex under his letter No. RK/25(09)/11/294 dated 25.02.2011. The I Party joined the services of the II Party/Management in the year 1983. The I Party has been an active member of BEML Employees Association and for the said reason the Management has targeted him for victimization. The II Party/Management issued a charge sheet dated 27.03.2010 to I Party/Workman. The I Party/Workman submitted his explanations and denied all the above charges alleged against him. In view of the above and other infirmities, the I Party/Workman submits that the domestic enquiry held by the II Party/Management is not fair and valid. The II Party/Management has not given the I Party/Workman an adequate opportunity as required under law to file his objection to the enquiry findings and to contend as to why the enquiry findings should not be accepted and acted upon to impose any punishment. The I Party/Workman submits that, the order of punishment dated 25.02.2011 passed by the II Party/Management is unjust, arbitrary and illegal. The I Party submits that, the II Party has not dealt with his case objectively and judiciously. The II Party has taken away his only means of livelihood in an arbitrary and capricious manner. The I Party is not gainfully employed and he has no prospects of getting any other job elsewhere in view of the stigmatic order of punishment. Therefore, the I Party prays this Court, to set aside the order of punishment dated 25.02.2011 passed against the I Party as unjust, arbitrary, discriminatory and illegal, and to direct the II Party to reinstate the I Party in service with full back wages, continuity of service and all other consequential benefits

2. Brief details mentioned in the Counter statement are as follows:-

The II Party states that, the I Party has joined the services of II Party on 25.01.1984. The allegation of the I Party that, the II Party has targeted and victimized him, are absolutely wrong and the same is denied. The I Party has been terminated from the services of the II Party for the proven act of misconduct of engaging himself in running Chit Fund business inside the II Party premises and collected money from the Employees towards the monthly subscription. It is true that, the I Party has been issued with a charge sheet dated 27.03.2010 for the charges. The Enquiry Officer, after conducting a detailed enquiry, has found that, the I Party is guilty of all the charges and as such the contention of the I Party that the Enquiry Officer, being subordinate to the Disciplinary Authority, has entertained bias against him is not correct and hence denied. The Enquiry Officer has afforded him all the reasonable opportunity to defend his case. It is denied that, the findings of the Enquiry Officer is unjust, arbitrary, unreasonable and perverse. The I Party has been indulging in the act of collection of money inside the factory premises during working hours for running chit fund business which is in contravention of Certified Standing Orders of the II Party. Further, the I Party has been accorded all reasonable opportunity to defend himself as required under the principles of natural justice and management has not predetermined as claimed by the I Party. The Disciplinary Authority has awarded the punishment judiciously by taking into consideration the gravity of the misconduct committed by the I Party and also, all other aspects including the past record of the I Party. The II Party has filed an application under section 33(2)(b) before the Industrial Tribunal, Bangalore, simultaneously, while passing the order of removal from service dated 25.02.2011, which is registered as SL.A. No. 13/2011 in I.D. No. 69/07 and pending for adjudication. It is denied that he has no source of income and the averments made by the I Party are only to gain sympathy. Therefore, the II Party prays this Court to reject the prayer of the I Party.

3. The Pertinent Point/issue involved in the present matter is as follows:-

“Whether I Party is entitled to get relief as prayed for in the claim statement, for the reasons mentioned therein?”

4. **Point:-** Already, this Court on 05.03.2014, after considering the I Party’s documents and evidence, and also, II Party’s material evidence and after hearing both parties has passed an Order that Domestic Enquiry conducted by II Party as against the I Party is not fair and proper.

5. The I Party in his claim statement as well as in his evidence has stated that, he is not gainfully employed and he has no other source of income to prosecute the case effectively before this Court. Further, I Party has filed interim relief, for that, also counter has been filed by the II Party by stating that, I Party is receiving Rent of Rs 13,000/- p.m. Further, the I Party states that, the house in which he is residing is in his children’s name and it is true to suggest that they are residing in the 1st floor portion of the house but it is not true to suggest that the ground floor portion and 2nd floor portion are let out and he is getting monthly income of Rs. 13,000/-. Further, it is not true to suggest that, he owns Maruti Wagan R car, bearing Registration No. KA03-MS-2206, and it is true to suggest that, I Party and his children are living jointly and it is false to suggest that his 2 sons are employed in private factories on monthly salary of Rs. 15,000/- each.

6. Further, this Court has passed the detailed order on 02.05.2017, regarding the interim relief, which is as follows:-

“That, the respondent herein is directed to pay a sum of Rs. 15,000/- per mensem to Sh. E Ramakrishnappa Applicant herein, for maintaining himself and also, the family of the workman from 01.05.2014 to the date of passing of the further orders in order to keep their body and soul together, and also, for the family expenses and also, to live honourably, on the basis of social, economic and natural justice and also, to conduct the case, effectively.

(ii) That, the respondent hereby directed to make payment of Rs. 15,000/- per mensem along with the entire arrears amount from 01.05.2014 on or before 29.05.2017 and also to file compliance memo to this court, after giving advance copy to the other side on or before 30.05.2017, without fail, and thereafter also, for the succeeding every month the compliance memo has to be filed by the respondent after making the said amount every month to the said Sh. E Ramakrishnappa, on or before 05th of the succeeding month, after giving advance copy to the other side.

(iii) That, by way of abandone caution the said Sh. E Ramakrishnappa is directed to inform his savings bank account details with the concerned Bank particulars to the respondent by speed post with acknowledgement due and, also to file compliance memo to this Court with speed post receipt, copy of the covering letter and also the, acknowledgement or track record, obtained from the website of Government of India, Department of Post, on or before 17.05.2017.”

7. Since, the II Party has not complied with the Interim Relief Order passed by this Court till date, the counsel for I Party has relied upon the judgment reported in (1999(81) FLR 789) (Calcutta High Court) (Mr. Justice Samares Banerjee.J) in Civil Order No. 6632(W) of 1996, dated 25.06.1998, between Debabrata Sen and State of West Bengal,

wherein, it is clearly held as follows:- “Section 11 empowers the Tribunal to regulate its own procedure. In exercise of such power, therefore, the Tribunal can certainly evolve a procedure for enforcement of an order directing payment of interim relief to the workman, the same being in the nature of an interlocutory order but for which the very object and purpose of such welfare legislation will be frustrated. Under such circumstances when an employer violates the order of the Tribunal directing payment of interim relief by not paying of such amount, even if such order of the Tribunal has not been set aside or stayed by the higher Court, it will certainly be open to the Industrial Tribunal to enforce compliance of such order of the Tribunal by making payment of interim relief as condition precedent for the employer to participate in the adjudication proceedings before the Tribunal and to defend itself.” Though, sufficient and adequate time has been granted for II Party to make payment of the said interim relief amount to the I Party, the II Party has not complied with the said interim relief order or obtained any stay order from the Hon’ble Higher Courts. As per the said citation, this Tribunal can certainly adopt a procedure for enforcement of the order directing interim relief to workman, and the same being in the nature of an interlocutory order but for which the very object and purpose of the said welfare legislation will be frustrated.

8. In fact, the II Party has not complied with the said interim relief till date without any valid reasons. Hence, this Tribunal can enforce the compliance of said order of interim relief as condition precedent of II Party to participate in the adjudication proceedings before the Tribunal and to defend itself. Further, the I Party specifically stated in the claim statement and also in the affidavit that, the Domestic Enquiry held by the II Party has been held to be not fair and proper by this Court and even the interim relief order passed by this Court by order dated 02.05.2017 has not been complied by the II Party. Further, the I Party has specifically stated in the affidavit that, he has suffered financial hardship and mental agony during the period of unemployment and all these years since the order of removal he has no other source of income to survive. Hence, the I Party has prayed to grant reinstatement, full back wages, continuity of service and other consequential benefits.

9. On careful perusal of materials brought on records, it is found that, II Party has no right to defend the case and also, I Party has established that, he is entitled to get relief as prayed for in the claim statement. The II Party has not disproved the claim made by the I Party in accordance with law. Further, in Basti Sugar Mills Co. Ltd. Vs State of U.P., (1979) 2 SCC 88, by V. Kishna Iyer, J: “Industrial Jurisprudence does not brook nice nuances and torturous technicalities to stand in the way of just solutions reached in a rough and ready manner. Grim and grimy life-situations have no time for the finer manners of elegant jurisprudence.” Thus, the process of industrial adjudication is an onerous task being guided by the constitutional mandates and aiming at settlement of the industrial dispute on a fair and just basis, tested on the touchstone of social and economic justice. When an industrial dispute is raised, it is a commotion to be pacified by dispensing justice. In such adjudication, not just the right to equality and other Constitutional guarantees, but the aims and ideals of the Constitution enter into the consideration. It is the duty of the Courts to apply directive principles in interpreting the Constitution and the laws. Also, it is reported in Lloyds Bank Ltd Vs. Bundy, (1974) 3 All ER 757 that Lord Denning first clearly enunciated his theory of “inequality of bargaining power”. He began his discussion on this part of the case by stating (at page 763): “There are cases in our books in which the courts will set aside a contract, or a transfer of property, when the parties have not met on equal terms, when the one is so strong in bargaining power and the other so weak that, as a matter of common fairness, it is not right that the strong should be allowed to push the weak to the wall.” In the present case also, it is seen that, the II Party has not established the alleged misconduct committed by the I Party, as per the Principles of Preponderance of Probability and also, as per the Principles of Natural Justice, for the above mentioned various reasons.

10. Further, it is reported in Hon’ble High Court of Karnataka, in W.P. No. 9974/2006 (L-TER), dated 07.01.2015, (Before Mr. Hon’ble Chief Justice D.H. Waghela and Mr. Hon’ble Justice Budihal. R. B), in the case of The Management of National Aerospace Laboratories Vs Engineering & General Workers Union and the Managing Directors, it is held as follows:- “The jurisdiction of an Industrial Tribunal, therefore, is expansive and creative and not restricted to only enforcing or interpreting the contract of service or the extant legal provisions and it is not fettered by the limitations of contracts and can even involve extension of existing agreement of the making of a new one, or in general, creation of new obligations or modification of old ones.” In the present case also, for the above mentioned facts and circumstances it is found that, I Party is entitled to get relief as prayed for in the claim statement for the reasons mentioned therein. Accordingly, this point is answered in favour of the I Party. Hence, the following Award is passed:-

AWARD

The II party/management is not justified in imposing the punishment of Removal from service on I party/Sh. E. Ramakrishnappa and the said II party is directed to reinstate the I Party, with full back wages, continuity of service and other consequential benefits that he would have received in the absence of the impugned penalty of removal from service.

(Dictated, transcribed, corrected and signed by me on 19th May, 2017)

V. S. RAVI, Presiding Officer

नई दिल्ली, 10 अगस्त, 2017

का.आ. 1917.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार प्रबंधक, मछली नेट मेकिंग प्लांट, तुंगभद्रा बोर्ड, बेल्लारी जिला एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 72/1990) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.06.2017 को प्राप्त हुआ था।

[सं. एल-42012/22/90-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 10th August, 2017

S.O. 1917.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 72/1990) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in Annexure, in the industrial dispute between the employers in relation to the Manager, Fish Net Making Plant, Tungabhadra Board, Bellary Distt. and their workman, which were received by the Central Government on 20.06.2017.

[No. L-42012/22/90-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIUBNAL-CUM-LABOUR COURT, BANGALORE

DATED : 12th JUNE, 2017

PRESENT : Shri V. S. RAVI, Presiding Officer

C.R. No. 72/1990

I Party

Sri. R. Venkateswara Rao,
Quarters No. 12, New Fishers Colony,
T.B. Dam,
Bellary Distt.- 533225

(For I party, Mr. Suresh P, Sridhara.D. Naik
Advocates)

II Party

The Manager,
Fish Net Making Plant,
Tungabhadra Board,
T.B. Dam,
Bellary Distt.- 533225

(For II party Mr. Nanda Kishore, Advocate)

AWARD

1. The Central Government vide Order No.L-42012/22/90-IR(DU) dated 16.11.1990 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

SCHEDULE

“Whether the action of the management of Fish Net Making Plant, Tungabhadra Board, T.B. Dam, Bellary Distt. in dismissing Sri. Venkateswara Rao, Ex-Workmen from his services is justified? If not, to what relief the workman is entitled to?”

2. Brief details mentioned in the Claim Statement are as follows:-

- The I Party submits that, he is the workman under the Fish Net Making Plant, an industry engaged in the process of manufacturing Fish Nets and Twines. The above industry is controlled by manager, who is in turn controlled by the secretary, T.B. Board. The activities of the Fish Net Making Plant is to buy raw-materials such as yarn from various yarn manufactures and out of the raw-materials, with the labour of workmen employed in the factory, preparing nets for catching fishes and twines and hanks and selling those manufactured goods to various consumers through open market and co-operative societies. Thus the II Party/Management long back accepted that the factory is an Industrial Concern. Further, the I Party has been appointed by the II Party on 06.02.1978 as a worker. The II Party also used to utilise his service for office works going to Treasury and Banks for encashment of bills. On 31.03.1984 the cashier of the Fish Net Making Plant, Shri. B.M. Balakrishnan sent one Laxmipathi naik, Second Division Clerk

of Fish Net Making Plant to treasury, and service of Laxmipathi naik has been borrowed from Government of Karnataka, Department of Fisheries for the time being, in accordance with the customary practice, prevailed in T.B. Board and the services of Government employees of Karnataka and Andhra Pradesh, have been borrowed.

- ii) Further, the cashier of F.N.M.P sent certain bills through Shri. H. Laxmipathi naik, by entering them in treasury encashment register in his own handwriting endorsed in the name of Shri. H. Laxmipathi naik. Further, after some time, the cashier sent 6 bills for Rs. 688.30/- endorsed in the name of Shri. H. Laxmipathi naik for encashment, through the I Party, and the I Party has handed over those bills to Shri H. Laxmipathi naik at treasury and returned back. After the lapse of time, of about $\frac{1}{2}$ year, the II Party sent a suspension order to the I Party on 13.09.1985. After a long time, on 07.02.1986, the II Party issued a memorandum of charges, and after the lapse of another 6 months on 30.08.1986, the II Party appointed an enquiry officer for enquiring the imputation of the misconduct. Further, the II Party mischievously denied to supply the copy of the Report of the enquiry officer to the I Party. Further, the I Party learnt that the report of the enquiry officer is negative one and II Party has failed to prove the charges made as against the I Party. The allegation of the II Party is that the I Party/Workman in conjunction with the Shri. H. Laxmipathi naik, prepared 2 bills for Rs. 20,000/- and Rs. 72,900/- by committing forgery, and managed to encash those bills from State Bank of Mysore, Hospet and misappropriated the said amounts. To draw a bill of F.N.M.P, there are various methods such as preparing the bill, verification, getting them passed from T.B. Board Secretary, and also, the counter signature of various officials are involved. The said facts have been upheld by the enquiry officer.
- iii) It is very curious to note from the records that those 2 bills have been passed by sub-treasury, Hospet, without entering them in the treasury encashment register, which is mandatory provision according to Karnataka Financial Code. Thus, the curious and mystery of Rs. 92,900/- has been tagged on the I Party and he has been victimized on the basis of false allegations. But the said Shri. H. Laxmipathi naik being the servant of the Karnataka Government filed a Writ Petition before the High Court of Karnataka and according to the final order the services of the above Shri. H. Laxmipathi naik has been reinstated, and his back wages have also been paid. In spite of failing to prove the charges alleged in charge sheet and contrary to the findings of the enquiry officer, the dismissal of the I Party from service is illegal, unwarranted and against the principles of natural justice. The attitude of the Management, in dismissing the services of the I Party, without sufficient proof of the case, is illegal, unfair and against the principles of the natural justice. Therefore, the I Party prays this Court to direct, the II Party to reinstate the I Party to his service with all consequential benefits which would meet the ends of justice.

3. Brief details mentioned in the Objection Statement are as follows:-

The II Party states that, the dispute raised by the I Party/Workman under Industrial Dispute Act is not valid as the Industrial Dispute Act is not applicable to Tungabhadra Board. Hence, this Court has no jurisdiction to entertain the case under Industrial Dispute Act. The said Shri. H. Laxmipathi naik moved to the Hon'ble High Court of Karnataka against the order of suspension. The Hon'ble High Court order is binding on II Party. The facts and circumstances of Shri. H. Laxmipathi naik's case are quite different from Sri. R. Venkateswara Rao's case. The suspension of Shri. H. Laxmipathi naik, has been set aside, due to absence of prior permission from his parent department of Karnataka Government. In any event the present claim is liable to be dismissed under law, and therefore the II Party prays this Court to reject the prayer of I Party by awarding the cost of the II Party.

4. The pertinent points/issues that arise for consideration in the present matter are:-

- (i) Whether the II Party proves that the Industrial Dispute Act, 1947 is not applicable to II Party and this Court has no jurisdiction to entertain the present case?
- (ii) Whether the action of the Management of Fish Net Making Plant, Tungabhadra Board, T.B. Dam, Bellary District, in dismissing the Shri. R. Venkateswara Rao, I Party/workman from his service is justified?
- (iii) Whether the I Party is entitled to get relief as prayed for in the claim statement in view of the reinstatement and payment of Back wages and consequential benefits already granted to the co-accused Shri. H. Laxmipathi naik?

5. Analysis, Discussion Findings with regard to the above mentioned point No. 1:-

The I Party has clearly stated in the claim statement that the I Party is a workman under the Fish Net Making Plant, an industry engaged in the process of manufacturing Fish Nets and Twines and the activities of the Fish Net Making Plant is to buy raw-materials and out of raw materials, with the labour of workmen employed in the industry, used to prepare nets for catching fishes and twines and hanks and selling those manufactured goods to various

consumers through open market and co-operative societies. In the Objection Statement also, II Party has admitted that the Fish Net Making Plant has been setup for the welfare of poor fishermen community as a Socio-Economic Welfare measure to cater to the needs of poor fishermen for their requirement of the Nylon twines and webbings and to help them in having better catches and the products of the said plant are distributed to the said fishermen through Government Department Co-operative Societies. The I Party in his evidence also stated that he has worked with II Party from 1978 to 13.09.1985 as general worker. In the charge sheet also I Party has been cited as a worker of Fish Net Making Plant, Tungabhadra Board, by II Party. In the suspension order issued by II Party to I Party, it is clearly stated that the attention of the Manager has been invited with regard to standing orders governing the factory workers under which the subsistence allowance payable for the I Party Grade-II Worker. In the memorandum No. FNMP/E-1/1058/E&A/85-86/580 dated 07.02.1986 also the II Party has mentioned the I Party as the worker in the Fish Net Making Plant. In the memorandum No. 5084/M-2/Audit/85-14 dated 27.08.1986, also the I Party has been cited as 2nd Grade Worker of the Fish Net Making Plant on behalf of II Party. In the above mentioned facts and circumstances it is crystal clear that I Party will come under the definition of workman under sec 2(s) of the Industrial Dispute Act, 1947 and the II Party has not established that the II Party is not an industry under the Industrial Dispute Act, 1947, and also, this Court has no jurisdiction to entertain the present case.

6. Analysis, Discussion Findings with regard to the above mentioned point Nos. 2 and 3:-

The workman/I Party has clearly stated in the claim statement that, after lapse of 6 months the II Party has issued the suspension order to the I Party on 13.09.1985 and along with him Shri. H. Laxmipathi naik has also been suspended and once again after a long time on 07.02.1986, the II Party has issued an memorandum of charges. However, the Enquiry Officer in his report dated 31.01.1989 has given his findings that the allegations regarding forgery of signature has to be dealt with only by handwriting experts and it is not possible for others to say anything definite about the forgery and the allegations of forgery can be stated by the hand writing experts only in a more authenticative manner and the second charge is also depend upon the encashment of forged bills. Further, as per the F.I.R the complaint has been lodged on 11.09.1985 in the Crime No. 38/85 as against Shri. H. Laxmipathi naik and Shri. R. Venkateswara Rao (I Party herein). Further, the I Party has produced the order passed by the Hon'ble High Court of Karnataka in Criminal Revision No. 140/2005 c/w Criminal Revision No. 119/2005, dated 30.05.2008, (Before Mr. Justice R.B. Naik) in the case of R. Venkateswara Rao Vs State of Karnataka, and also Criminal Revision No. 119/2005 in the case of H. Laxmipathi naik, R. Venkateswara Rao Vs State of Karnataka, wherein it is clearly held as follows:- “Both the Criminal Revision Petition are allowed. The order of conviction and sentence of the petitioners for the offence punishable under section 467 of IPC is set aside. The petitioners-accused and acquitted of the charges levelled against them. The bail bonds furnished by the petitioners-accused shall stand dissolved. The fine amount if any paid shall be refunded to them.” Further, in the W.P. No. 61257/2009, dated 19.02.2015, the Hon'ble High Court of Karnataka (Before Mr. Justice A.S. Bopanna), in the case of R. Venkateswara Rao (I Party herein) Vs Tungabhadra Board and the Manager of Fish Net Making, it is held as follows:- “The matter is remitted to the CGIT to restore C.R. No. 72/1990 (the present case) on file and consider the same in accordance with law.”

7. Further, as per the proceedings of Director of Fisheries dated 18.11.2010, the compulsory retirement order passed against the said Shri. H. Laxmipathi naik, who has been punished with reference to the proceedings of the Directors of Fisheries by vide its members adm/(s)/39/2002-03 dated 28.11.2006 has been set aside and the said person has been restored to the Government service as Assistant Director (Grade-I). Further, as per the order passed by the, Office of the Principal Accountant General (A&E) Karnataka, Bangalore, the pension claims of the said Shri. H. Laxmipathi naik, has been finalised and also pensionary benefits and other benefits have been given to the said Shri. H. Laxmipathi naik. Further, as per the letter dated 15.09.2008, written by Secretary to Government, Home Department, Government of Karnataka, to Director of Prosecution, it is clearly mentioned that the Government have decided not to prefer an appeal as against the said Criminal Revision No. 140/2005 and 119/2005. On that ground only I Party has categorically stated that the co-accused namely, Shri. H. Laxmipathi naik, has been reinstated and also all the benefits have been granted. However, for the I Party, the II Party has not granted the same relief without any valid reasons. Further on perusal of F.I.R. it is evident that, Shri. H. Laxmipathi naik, has also been cited as co-accused along with the I Party/Shri. R. Venkateswara Rao, herein. However, only for the said Shri. H. Laxmipathi naik, the order of compulsory retirement has been revoked and all the pension benefits and other benefits have been granted to Shri. H. Laxmipathi naik. Further, it is pertinent to point out that as against the Shri. H. Laxmipathi naik and also the I Party, the same allegations have been made against them by the II Party. Hence, as per the principles of natural justice also, it is clear that the same orders of reinstatement has to be passed in favour of the I Party, as already done in the case of co-accused Shri. H. Laxmipathi naik, by the II Party.

8. Further, the allegation of the II Party, is that, the I Party along with the said Shri. H. Laxmipathi naik, during the year 1984 have committed the forgery and misappropriation of Rs. 92,900/- and based upon the said allegation the criminal case in CC No. 1164/92 has been filed. In the said case only the I Party herein along with Shri. H. Laxmipathi naik have been acquitted as per the Order passed by the Hon'ble High Court of Karnataka in Criminal Revision Case. Further, the Government of Karnataka, also decided not to file any further proceedings as against the said criminal

revision orders of the Hon'ble Karnataka High Court. Further, the Manager in Ex M-1, dated 07.02.1986 has stated that, it appears that I Party has colluded with the said Shri. H. Laxmipathi naik in preparation of the forged bills with a view to misappropriate the amount. However, in the said case only, both have been acquitted and only Shri. H. Laxmipathi naik has been reinstated with back wages and all other benefits, and I Party/ Venkateswara Rao, herein has not been granted the legal benefits though both have been acquitted for the allegation made against both of them. Further, in the explanation dated 05.03.1986, itself the I Party has denied the Memorandum of Charges and also said that on account of non furnishing of the Photostat copies of the said bills he could only say that he has never forged the said bills and he has never encashed them. Further, the Enquiry Officer in his report dated 31.01.1989, has taken into consideration the evidence of management witnesses and also ultimately held that forgery has to be dealt with by handwriting experts and it is not possible for others to say anything definite about the forgery alleged to have been committed. Further, on careful consideration of materials on record it is apparent that, the II Party has given reinstatement, back wages and other benefits to co-accused Shri. H. Laxmipathi naik and I Party has not been granted any benefits and thus, there is victimization, unfair labour practice and malafides in the action taken by the II Party, for the above mentioned reasons. Further, the MW-1, has admitted that, he is not having personal knowledge about the incidents in dispute, and he does not know as to whether the bills in question contained counter signatures of the Secretary, T.B.Board, and he has not seen the bills in question and after one and half year only the fraudulent act has been detected. Further, the MW-2, has also admitted that, he has been appointed as an Enquiry Officer to conduct the enquiry as against the I Party, and he has not stated anything about the proving of the charges.

9. Further, it is established that the, I Party has submitted credible and weighty materials on record to establish that the I Party is entitled to get reinstatement/all monetary benefits, continuity of service, back wages, as already granted to co-accused Shri. H. Laxmipathi naik, by the II Party. Further, the II Party has not established anything worthwhile to dispute the claim of the I Party, based upon the material records filed herein. Further, it is pointed out in the written submission filed on behalf of II Party that the standard of proof required in the Criminal Case is much higher than the standard of proof required in Departmental Enquiry. In the present case also, in the above mentioned, criminal revision both I Party and Shri. H. Laxmipathi naik have been acquitted by the Hon'ble High Court of Karnataka. Therefore, the submission of the I Party, that he is not guilty of the allegation is further strengthened by the Judgment passed by the Hon'ble Karnataka High Court in the above mentioned Criminal Revision case judgment. Further, it is pointed in the Written submissions filed on behalf of II Party dated 23.12.2002, that the Disciplinary Authority may differ from the findings of the Enquiry Officer and also, may pass an order based on the evidence on record and accordingly, the I Party has been convicted for forgery and misappropriation, while in service. However, it is found that the Hon'ble Karnataka High Court in the said Criminal Revision case acquitted both I Party and Shri. H. Laxmipathi naik. Further, the I Party has pointed out in the claim statement that I Party has made to suffer mental agony, economic hardships and he has suffered a lot during all these years and therefore he is eligible for full back wages from II Party.

10. Further, in the evidence also, I Party has stated, all of a sudden he has been dismissed from service by II Party, and he has not worked anywhere. In the written submission of II Party dated 23.12.2002 it has been stated that, I Party has been employed elsewhere all these years. However, the said statement has not been established in an acceptable manner by the II Party. Further, in the written arguments dated 14.09.2009, I Party has pointed out that, I Party is a married man having children's and he has faced 15 years of unemployment and he is not having any age factor, to find employment, elsewhere. Further, it is evident that, there is illegality and irregularity in the action taken by the II Party as against the I Party, though the co-accused Shri. H. Laxmipathi naik has been reinstated with full back wages. Further, it is reported in Lloyds Bank Ltd Vs. Bundy, (1974) 3 All ER 757 that Lord Denning first clearly enunciated his theory of "inequality of bargaining power". He began his discussion on this part of the case by stating (at page 763): "There are cases in our books in which the courts will set aside a contract, or a transfer of property, when the parties have not met on equal terms, when the one is so strong in bargaining power and the other so weak that, as a matter of common fairness, it is not right that the strong should be allowed to push the weak to the wall." Further, in the Judgment reported in ILR 1998 KAR 18 BEFORE Mr. Justice R.P. SETHI AND Mr. Justice S.R. BANNURMATH, J in the case of The Management of the Mysore Coffee Processing co-operative Society Ltd Vs Presiding Officer, it is particularly held that, "Where the Management discharges a workman by an Order which is void for want of an Enquiry, the "Doctrine of Relation" back cannot be invoked and in that event the workman would be entitled to the grant of Full back wages from the date of termination of his services till the date of award of the Labour Court." In the present case also, it is seen that, the I Party has established that he is entitled to get full back wages, from the II Party. For the above mentioned various reasons and grounds, it is held that the I Party is entitled to get relief, as prayed in the claim statement.

11. Further, it is also clear that, the allegations made as against I Party has not been established by the II Party as per the principles of preponderance of probability and it is also apparent that the, I Party has not been terminated by the II Party, by following the due process of law. Further, it is established that, there is discrimination and violation of right, caused to the I Party by II Party by not providing employment to I Party and at the same time providing employment,

back wages and other benefits to co-accused Shri. H. Laxmipathi naik. Further, it is found that, the allegations have not been proved by the II Party, after following the due procedure as laid down by law and also by following the principles of natural justice. Thus, the points are answered, in favour of the I Party.

AWARD

The II Party/Management is not justified in imposing the punishment of dismissal from the service of I party/R. Venkateswara Rao, and II Party, is directed to reinstate/ to grant all monetary benefits to the I Party with continuity of service, and other consequential benefits that he would have received in the absence of the impugned punishment of dismissal from service, with full back wages, and the present reference is answered in favour of the I Party, without cost for the above mentioned peculiar facts and circumstances.

(Dictated, transcribed, corrected and signed by me on 12th June, 2017)

V. S. RAVI, Presiding Officer

List of Witness on the side of I Party:(V)

WW 1	Sh. Venkateswara Rao, I Party/ workman
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List of Witness on the side of II Party:(V)

MW 1	Sh. Vijay Chandapur, Engineer
MW 2	Sh. K. Lakshminarayana Rao

Exhibit marked on behalf of I Party:(V)

Exhibits	Date	Description of Document
Ex W-1	26.05.1989	Charges
Ex W-2	05.03.1986	Explanation to Confidential Memorandum of Charges
Ex W-3	06.10.1986	Notice to appear before the Enquiry

Exhibit marked on behalf of II Party: (V)

Exhibits	Date	Description of Document
Ex M-1	01.10.1985	Suspension Order issued to I Party
Ex M-2	18.04.1987	Statement of Balakrishnan before Enquiry Officer
Ex M-3	04.05.1987	Statement of Singit before Enquiry Officer
Ex M-4	17.06.1987	Statement of Badri before Enquiry Officer
Ex M-5	19.08.1987	Statement of Dixit before Enquiry Officer
Ex M-6	15.12.1987	Statement of Vijayalakshmi before Enquiry Officer
Ex M-7	15.12.1987	Statement of Somasekara before Enquiry Officer
Ex M-8	17.12.1987	Statement of Nagaraj before Enquiry Officer
Ex M-9	10.05.1988	Examination of Delinquent by Enquiry Officer
Ex M-10	05.07.1988	Examination by Delinquent
Ex M-11	12.07.1988	Cross Examination by Delinquent
Ex M-12	04.11.1988	Examination by Delinquent
Ex M-13	07.02.1986	Memorandum

नई दिल्ली, 10 अगस्त, 2017

का.आ. 1918.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उप-निदेशक (अनुसंधान), कॉफी अनुसंधान उप-स्टेशन, चेतली एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलोर के पंचाट (संदर्भ संख्या 42/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.08.2017 को प्राप्त हुआ था।

[सं. एल-42011/31/2009-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 10th August, 2017

S.O. 1918.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 42/2009) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the employers in relation to the Deputy Director (Research), Coffee Research Sub-station, Chettalli and their workman, which were received by the Central Government on 08.08.2017.

[No. L-42011/31/2009-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIUBNAL-CUM-LABOUR COURT, BANGALORE

DATED : 28th JULY, 2017

PRESENT : Shri V. S. RAVI, Presiding Officer

C.R. No. 42/2009

I Party

The Working President,
Mysore Thota Karmikara Sangh,
Jayapura,
Koppa (KN) – 577123

Advocates for I Party:
Mr. Muralidhara & Mr. M. Venkatappa

II Party

The Deputy Director (Research),
Coffee Research Sub-Station,
Chettalli – 571248

Advocate for II Party:
Ms. Pooja, for and on behalf of
M/s. M.R.C. Ravi & B. Sudhakar

AWARD

1. The Central Government vide Order No.L-42011/31/2009-IR(DU) dated 24.07.2009 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule:

SCHEDULE

“Whether the demand of the Mysore Thota Karmikara Sangha for payment of wages to Shri Raju and 111 others, as per Annexure, at par with the regular Group ‘D’ employees by the management of Coffee Research Sub-Station, Chettalli, is legal and justified? If yes, what relief the workmen are entitled to?”

2. The brief details mentioned in the Claim Statement are as follows:

The I Party is a Trade Union registered under the Trade Unions Act, 1926. The non staff, maistries and mazdoors employed by the Coffee Board – Research Development at Chettalli Depot are the members of the I Party/Union. The grievance of the workman is that, the II Party has denied them pay scales applicable to similarly placed employees in the Coffee Board. The I Party Union is espousing the cause of 112 workmen employed in the Coffee Board Research Institute, Coffee Research Sub-Station. The research output is for the benefit of coffee planters and coffee industry as a whole. The Research Sub-Station at Chettalli is situated in a total area of 230 acres. In addition to these employees, the Coffee Board has employed certain categories of workmen to carry on various

activities/jobs in the plantation, maintained by the Coffee Research Institute. All of them have been made permanent in their respective cadre. However, the Management has not extended the benefits of pay scales applicable to them in terms of the Central Pay Scales as adopted by the Coffee Board and also, extended to other employees in the Board. The Coffee Board has extended all the benefits to its employees in terms of Central Pay Scales. The I Party Union submits that, the Research Sub-Station and the Coffee Plantation are part and parcel of the Coffee Board. As such these workmen are entitled to pay scales and other benefits as applicable to Coffee Board employees, that is, on par with central pay scales and other benefits. The workmen employed in the Coffee Research Sub-Station carry on the activities which can be categorized as Group D jobs. The workmen involved in this reference are entitled for the pay scales and other benefits on par with other Coffee Board employees in the appropriate pay scales in as much as these workmen perform duties of the same or similar ones as performed by the employees of the Coffee Board. Similarly, the mazdoors and temporary workers are also entitled to pay scales on par with the workers of the Coffee Board in similar jobs. Therefore, the I Party prays that, this Tribunal may be pleased to pass an Award

- a) To hold that, the demand made by the I Party Union in respect of non staff, maistries, mazdoors and temporary workers as per the list in the Annexure is justified.
- b) To direct the II Party to grant pay scales and all other benefits to non-staff, maistries, mazdoors and temporary workers as made applicable to Coffee Board employees in terms of Central Pay Commission recommendations revised from time to time.
- c) To direct the II Party to give effect to the above pay scales from the date of joining to their service respectively and to pay all the consequential arrears and benefits, and
- d) To pass any other order as deemed fit in the facts and circumstances of the case, in the interest of justice and equity.

3. Brief details mentioned in the Counter Statement are as follows:-

The II Party states that, the I Party employees are not part of regular section of establishment of Coffee Board. Further, the Coffee Estate/Plantation of Coffee Board at CRSS, Chettalli is a Plantation industry but not a pure agriculture establishment. The II Party submits that, the workmen employed in the Coffee Plantation at CRSS, Chettalli as non-staff, maistries and mazdoors are appointed as mazdoors as per Plantation Act and their wages are fixed by the Government of Karnataka in accordance with the Plantation Labour Act 1951 and the Minimum wages Act 1948 and they have not been appointed by following due process of recruitment rules of the Coffee Board. The workmen appointed in the CRSS, Chettalli are estates workers as per Plantation Labour Act, 1951. Further, the II Party submits that, there are several other factors like responsibilities, reliabilities, experience, confidentiality involved, functional need and requirements commensurate with the position in the hierarchy, qualification required which are equally relevant. The Present reference does not merit any consideration and hence the reference made by the Government of India is not maintainable in law. Further, it is submitted that, the workmen employed in the Coffee Plantation at CRSS, Chettalli as Non-Staff, maistries and mazdoors are appointed as mazdoors as per Plantation Act, and their wages are fixed by the Government of Karnataka in accordance with the Plantation Labour Act, 1951. The workmen who appointed in the CRSS, Chettalli are estate workers as per Plantation Labour Act. The II Party states that, the labourers working in the Coffee estate (CRSS Chettalli) are provided with all Labour Welfare measures as required under the Plantation Labour Act/Minimum wages Act/Minimum Bonus Act/Gratuity act which includes free quarters with electricity and water supply, sick/maternity leave, leave with wages, Home town leave travel expenses, provision for free kamblies and blankets medical benefits, EPF/EPS contribution by the employer, Insurance scheme paid by the employer, bonus, gratuity etc., whereas the regular employees are given only certain allowances like HRA, LTC, etc., Further, it is submitted that, since the demand made by the Union is not justified and not tenable in law, it has not been accepted by the II Party and hence, the conciliation ended in failure. Therefore, for the reasons mentioned above, the II Party prays this Court to dismiss the claim of the I Party, in the interest of justice and equity, as not maintainable.

4. The point/issue that arises, for consideration in the present matter is as follows:-

“Whether the demand of the Mysore Thota Karmikara Sangha for payment of wages to Shri Raju and 111 others, as per Annexure, at par with the regular Group 'D' employees by the management of Coffee Research Sub-Station, Chettalli, is legal and justified? If yes, what relief the workmen are entitled to?”

5. Analysis, Discussion and Findings with regard to the above mentioned point/issue:-

On behalf of I Party as WW-1 namely, Sh. K. Prabhakara mentioned at Sl.No. 62 in the Annexure enclosed with the present reference has been examined and he has admitted that, he is the one of the concerned workman and also a member of the I Party Union and he knows the facts of the case. As per Ex W-3, the said Sh. K. Prabhakara has filed his appointment order issued on behalf of II Party and as per the said appointment order dated 31.05.1989 itself, the

WW-1 has been appointed as mazdoor at Coffee Research Sub-Station on daily wage basis as per the rules of the Plantation Labour Act/Minimum Wages Act. On that ground only the II Party has pointed out in the counter statement that, the mazdoors working in the Coffee Estates are appointed as mazdoors under the Plantation Labour Act/Minimum Wages Act and they are not part of regular section of the establishment of Coffee Board and there is no sanctioned strength of mazdoors in the II Party and the workman employed in the Coffee Plantation at CRSS, as non-staff, maistries and mazdoors are appointed as mazdoors as per Plantation Act and their wages are fixed by the Government of Karnataka in accordance with the Plantation Labour Act 1951 and Minimum Wages Act 1948 and they have not been appointed by following the due process of recruitment rules of the Coffee Board. Further, the workman appointed as per I Party Annexure details are estate workers as per the Plantation Labour Act 1951, whereas the Group 'D' workers are appointed in the establishment of coffee board under the recruitment rules as per the sanctioned post, and also, as provided by the Government of India and hence, the I Party workers do not form the part of Group 'D' workers.

6. Further, WW-2 namely, K.M. Subramani, General Secretary, of I Party has also admitted that, it is true to suggest that, the workman covered under the present reference are being paid wages as per the provisions of Karnataka Planters Association and it is true to suggest that, there used to be Bi-partite Settlement between the Planters Association and Labour Unions and benefits are being given to the workmen covered under this reference in accordance with such Bi-partite Settlement. Further, WW-2 has candidly admitted in his cross-examination that, it is true to suggest that, I Party workmen are not doing the similar work as done by Group 'D' employees. WW-1 also has admitted that, it is true to suggest that, at present mazdoors are not paid wages equivalent to Group 'D' employees and it is true to suggest that, WW-1 has been paid with wages as per the wages fixed by the Karnataka Government in accordance with Plantation Labour Act, 1951 and Minimum Wages Act, 1948 and also specifically admitted that, it is true to suggest that, I Party do not fall in the Group 'D' category workers. From the said specific admission of WW-1 and WW-2 it is crystal clear that the workers of I Party are not doing the similar work as done by Group 'D' employees. On that ground only, the II Party has categorically pointed out that, the nature of work/duties and responsibilities of Group 'D' employees are entirely different from that of the I Party workers and there cannot be any comparison between the I Party and Group 'D' employees of the Coffee Board in respect of duties and responsibilities. On a perusal of material record it is seen that, there is considerable force in the said submission made by the II Party, in the light of the above mentioned admissions made by WW-1 and WW-2 in their evidences.

7. Further, MW-1 namely, Assistant Secretary (Legal) of the II Party has clearly pointed out that, the nature of work carried on by the mazdoors of I Party is digging of earth, preparing seed beds, planting seeds, etc., and whereas the Group 'D' employees are confined to office work and II Party has employed the employees after following the due process of recruitment and they are regular employees of II Party, appointed as per the sanctioned posts and accordingly they are given the pay scale applicable to them, by the II Party. Further, MW-1 has specifically clarified that, it is not true to suggest that, Coffee Board has sanctioned the post of non-staff, maistries and mazdoors and it is not true to suggest that, all the workmen covered under the present reference are appointed on the selection by the Coffee Board against the sanctioned posts and it is not true to suggest that, all the workmen covered under the present reference are appointed by the Coffee Board as Group 'D' employees. In such circumstances only MW-1 significantly pointed out in his evidence that, he does not agree with the suggestion that, all the workmen covered under this reference are entitled for Group D employees wages.

8. MW-2 namely, Assistant Farm Manager of II Party has also pointed out in his evidence that, mazdoors working in Coffee estates have been appointed as mazdoors under the Plantation Labour Act/Minimum Wages Act and continued to work as mazdoors. WW-1 and WW-2 have also admitted that the mazdoors have been appointed under the Plantation Labour Act/Minimum Wages Act. Further, MW-2 has particularly pointed out in his evidence that, I Party workmen have not been appointed by following the due process of recruitment rules of the Coffee Board and also, as per the sanctioned posts, and the I Party workers who are appointed in the CRSS are estate workers under the purview of Plantation Labour Act 1951, whereas the Group 'D' workers who are appointed in the establishment of coffee board under the recruitment rules, provided for it, by the Government of India and hence, the I Party workers do not form the part of Group 'D' employees as claimed by the I Party and the workmen are not engaged in the research work in the laboratory and office, whereas regular Group 'D' employees assist in the office work. Further, MW-2, has clarified that, there are several other factors like responsibilities, reliabilities, experience, confidentiality involved, functional need and requirement commensurate with the position in the hierarchy and hence the I Party workers cannot claim wages on par with Group 'D' employees. Further, MW-2 has clearly pointed out in his evidence that, the several factors like; (i) the work programme of his department (ii) the nature of the contribution expected of him (iii) the extent of his responsibility and accountability in the discharge of his diverse duties and functions (iv) the extent of and nature of freedoms/limitations available or imposed on him in the discharge of his duties (v) the extend of powers vested in him (vi) the extent of his dependence on superiors for the exercise of his powers (vii) the need to co-ordinate with other departments, etc., which are equally relevant. On that ground also, it is seen that, I Party workers are not entitled to get

wages on par with Group 'D' employees, in terms of Central Pay Commission recommendation, received from time to time.

9. The specific and significant deposition of MW-1 and MW-2 have not been disproved by I Party and in fact, the I Party workers witnesses namely WW-1 and WW-2 have admitted that I Party workers have been appointed as per the Plantation Labour Act/Minimum Wages Act and the work done by the I Party workers and Group 'D' employees are not similar. Further, as per Ex W-7, appointment of mazdoors have been made in the estate of CRSS as casual mazdoors after addressing the copy of the appointment order to secretary Karnataka Plantation and General Labour Trade Union, Chettalli. Further, as per Ex W-8 engaging dependents of permanent labours of CRSS on casual basis has been requested on 01.12.2003 by Deputy Director of Research, CRSS to the Coffee Board and it is also pointed out in the Ex W-8 that permission may be accorded to engage the required number of dependents of permanent mazdoor on casual basis. On that ground only II Party has pointed out in the counter statement that, appointment of I Party workers have not been made as per the procedure prescribed for the appointment of Central Government employees and there is no such sanctioned posts and they are also not performing the similar functions of Group 'D' employees of Central Government. Further, as per Ex M-2, Settlement regarding Non-Staff employees has been made on 19.02.2009.

10. Further, before granting wages to I Party workers, at par with, the regular Group 'D' employees as per the pay scales in terms of the Central Pay Commission recommendation revised from time to time, as prayed for by the I Party in the claim statement, it is seen that, the representation of the employees as well as employers have to be considered besides seeking responses from the general public, as MW-2 has clearly deposed that, the I Party workers are getting 50% lesser amount, when compared to the Group 'D' workers of the II Party. Further, in the judgment reported in 2009 1 SCC (L&S) 963, in C.A. Nos. 2985/2007, 2986-2990/2007, 6455/2008 and 6456/2008, dated 04.11.2008, (Before Mr. Justice B.N. Agrawal, Mr. Justice H.S. Bedi and Mr. Justice G.S. Singhvi), in the case of Official Liquidator Vs Dayanand and others, it is held as follows:- "The creation and abolition of posts, formation and structure/restructuring of cadres, prescribing the source and mode of recruitment and qualification and criteria of selection etc., are matters which fall within the exclusive domain of the employer. Although the decision of the employer to create or abolish posts or cadre or to prescribe the source or mode of recruitment and laying down the qualification etc., is not immune from judicial review, the Court will always be extremely cautious and circumspect in tinkering with the exercise of discretion by the employer. The Court cannot sit in appeal over the judgment of the employer and ordain that a particular post or number of posts be created or filled by a particular mode of recruitment. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provisions or is patently arbitrary or vitiated by mala fides." In the present case also, WW-1 and WW-2 have clearly admitted that, I Party workers are not doing the similar work of Group 'D' employees of II Party, and hence, it is seen that, the action of the employer is not contrary to any constitutional or statutory provisions or is patently arbitrary.

11. Further, in the judgment reported in 2009 2 SCC (L&S) 597, in C.A. Nos. 5607-08/2001, dated 25.10.2007, (Before Mr. Justice A.K. Mathur and Mr. Justice Markandey Katju), in the case of State of Punjab and others Vs Surinder Singh and another, it is held as follows:- "Party in employment – equal pay for equal work – principle, held, has undergone a sea change since its initial recognition – presently, principle applies if identity between two employees is 'complete and total' – Daily wager, held, having not undergone process of regular selection cannot therefore compare himself with a regular employee – Observations made in S.C. Chandra, (2007) 8 SCC 279, reiterated that grant of pay scale is an executive function – In view of separation of powers, judicial interference to be avoided – Montesquieu's theory quoted – Daily wager tractor driver's – Held not entitled to claim pay scale of regular incumbents." Further, in the judgment reported in 2009 2 SCC (L&S) 696, in C.A. Nos. 1976/2003 - 1986-2032-2031-2037-40-2090-1979-83-4464-4350-7466/ 2003, 920/2004, 3248-6123/2005 and 3025/2006, dated 04.08.2009, (Before Mr. Justice S.B. Sinha and Mr. Justice Deepak Verma), in the case of State of Punjab and another Vs Surjit Singh and others, it is observed as follows:- "Held, principle of 'equal pay for equal work' cannot be applied blindly – Principle has undergone a sea change – While making appointments in present case recruitment rules were not followed – State directed to examine cases of respondents by appointing an expert committee – Directed to examine whether respondents satisfy factors for invocation of Charanjit Singh case, (2006) 9 SCC 321, in its entirety, including whether appointment had been made in terms of the recruitment rules – Parity in employment..... Grant of benefit of doctrine depends upon a large number of factors including equal work, equal value, source and manner of appointment, equal identity of group and wholesale or complete identity – Only question that arises in each case is how principle is to be applied in different fact or situations – Constitution of India, Arts. 16,14 and 39(d) – Parity in employment.....Pay – Equal pay for equal work – Applicability of doctrine – Pleadings and burden of proof in respect of – Held, insistence on strict pleadings and proof of various factors emphasised – Parity in employment..... Equity clause contained in Art, 14 should be invoked only where parties are similarly situated and where orders passed in their favours are legal and not illegal – It has a positive concept." And in the judgment reported in 2004 SCC (L&S) 225, in C.A. No. 3527/1998, dated 18.11.2003, (Before V.N. Khare, C.J. and S.B. Sinha and Dr. A.R. Lakshmanan, JJ), in the case of Government of W.B Vs Tarun K. Roy and others, it is held as follows:- "Allegation of parity in

duties and functions not substantiated but rather contradicted by evidence on record.” In the present case also, the evidences of WW-1 and WW-2 have not substantiated the Submissions made with regard to parity in functions and duties between I Party workers and Group ‘D’ employees of II Party but rather contradicted by their own evidences on record.

12. Further, in the judgment reported in (2011) 1 SCC (L&S) 348, (2011) 2 SCC (L&S) 452, in C.A. No. 2823/2009, dated 14.01.2011, (Before Mr. Justice R.V. Raveendran, and Mr. Justice A.K. Patnaik), in the case of Union Territory administration, Chandigarh and others Vs Manju Mathur and another, it is held as follows:- “Pay-Parity in pay scale – Entitlement to – Held, doctrine of equal pay for equal work can be invoked only when employees are similarly situated..... In instant case, High Level Equivalence Committee found that posts of Senior Dietician and Dietician held by respondents under UT of Chandigarh were not comparable or equivalent to corresponding, posts in Directorate Research and Medical Education, Punjab.” Also, in the judgment reported in (2011) 1 SCC (L&S) 340, (2011) 2 SCC (L&S) 429, in C.A. Nos. 486-495/2011, dated 13.01.2011, (Before Mr. Justice R.V. Raveendran, and Mr. Justice Markandey Katju), in the case of State of Rajasthan and others Vs Daya Lal and others, it is held as follows:- “The High Courts, in exercising powers under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts.” In the present case also, II Party has clearly pointed out that, I Party workers have not been appointed as against the sanctioned vacant posts and also as per the regular recruitment procedure in accordance with the relevant rules for appointment of Group ‘D’ employees.

13. Further, in the citation filed on behalf of I Party reported in 1963-I-LLJ, Supreme Court of India, in C.A. Nos. 349/1962 and 31/1961, dated 21.03.1963, (Before Mr. Justice P.B. Gajendragadkar, Mr. Justice K.N. Wanchoo and Mr. Justice K.C. Das Gupta), in the case of Harinagar Cane Farm and another Vs State of Bihar and others, it is held as follows:- “Agricultural operations carried on by a limited company like any other trade or business by investing capital and employing labour, held, “industry” within the meaning of S. 2(j) of the Act – Danger of laying down general propositions in industrial adjudications..... It was further pointed out that in dealing with industrial matters, industrial adjudication should refrain from enunciating any general principles or adopting any doctrinaire considerations. It is desirable that industrial adjudication should deal with problems as and when they arise and confine its decisions to the points which strictly arise on the pleadings between the parties.” However, in the present case it is found that, the I Party workers are not entitled to get equal pay as Group ‘D’ employees of II Party on par with Central Government Pay Scales and other benefits, as they are not doing the similar work and I Party workers have not been appointed in the regular recruitment procedure, in accordance with the relevant rules, for the sanctioned posts.

14. Further, the basic demand of I Party is for grant of wage scales applicable to Group ‘D’ employees (Multi Task Staff as per 6th Pay Commission). However, it is found that, the nature of work/duties and responsibilities of Group ‘D’ employees are entirely different from I Party workmen and also I Party workers have not been appointed as against the sanctioned post and the Doctrine of equal pay for equal work can be invoked only when the employees are similarly situated and that similarity of the designation or nature or quantum of work is not determinative of equality, in the matter of pay scales and that the Court has to consider several factors and only if there is wholesale identity between the holders of two posts, equality clause can be invoked and not otherwise as held in the Union Territory Administration case reported in 2011 1 SCC (L&S) 348. Further, on the totality of the above mentioned facts and circumstances and also after taking into consideration the evidence and Exhibits mentioned herein below, in proper prospective, the following award is passed.

AWARD

The demand of the Mysore Thota Karmikara Sangha for payment of wages to Shri Raju and 111 others, as per Annexure, at par with the regular Group ‘D’ employees by the management of Coffee Research Sub-Station, Chettalli, is not justified and also not tenable in law. Hence, the reference is rejected, without costs, for the above mentioned peculiar facts and special circumstances of the present matter.

(Dictated, transcribed, corrected and signed by me on 28th July, 2017)

V. S. RAVI, Presiding Officer

List of Witness on the side of I Party:

WW1	Sh. K. Prabhakara/I Party
WW 2	Sh. K.M. Subramani, General Secretary

List of Witness on the side of II Party:

MW1	Sh. S. Ravichandran, Assistant Secretary(Legal)/ II Party
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MW 2	Sh. B.N. Shankar, Liaison Officer/Assistant Farm Manager/ II Party
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Exhibits marked on behalf of I Party

Exhibits	Date	Description of Document
Ex W-1	10.11.2010	Letter of Authorisation
Ex W-2	-	Form of Trade Union
Ex W-3	31.05.1989	Appointment Order issued to WW-1
Ex W-4	27.04.2009	Report on Failure of Conciliation
Ex W-5	-	Appointment of Group 'D' – IV – reg.
Ex W-6	27.12.1985	Office Order
Ex W-7	03.11.1993	Appointment of Mazdoors
Ex W-8	01.12.2003	Engaging dependents of permanent labours of CRSS on casual basis – reg.

Exhibits marked on behalf of II Party

Exhibits	Date	Description of Document
Ex M-1	06.09.2011	Authorisation to Lead Evidence
Ex M-2	19.02.2009	Settlement regarding Non-Staff employees

नई दिल्ली, 10 अगस्त, 2017

का.आ. 1919.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिपार्टमेंट ऑफ पोस्ट एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय नं. 1, मुंबई के पंचाट (संदर्भ संख्या 1/17 ऑफ 2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.05.2017 को प्राप्त हुआ था।

[सं. एल-40011/04/2014-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 10th August, 2017

S.O. 1919.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 1/17 of 2014) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Mumbai as shown in the Annexure, in the industrial dispute between the employers in relation to the Department of Post and their workman, which were received by the Central Government on 31.05.2017.

[No. L-40011/04/2014-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

Present : JUSTICE SURENDRA VIKRAM SINGH RATHORE, Presiding Officer

REFERENCE NO. CGIT-1/17 OF 2014

Parties: Employers in relation to the management of
Department of Posts

And

Their workman

Appearances:

For the Management : Mr. H.D. Rathod, Adv.

For the workman : ex parte

State : Maharashtra

Mumbai, dated the 9th May, 2017**AWARD**

1. As per the schedule of the reference the following question was referred to this Tribunal.

“Whether the action of the management of Postal Department Akola th. Its Sr. Superintendent of Posts in terminating the services of Shri S.T.Wankhade w.e.f. 2.1.2000 is just fair and legal? If not, to what relief the workman concerned is entitled to?”

2. In this case, Statement of Claim was filed on behalf of workman on 11.8.2014 and after the Written Statement, no rejoinder affidavit was filed. Since 29.5.2015, none appeared on behalf of the workman, therefore, in order to protect the interest of workman fresh notice vide order dated 15.12.2015 was issued to the workman but inspite of that none appeared on behalf of the workman. Therefore, vide order dated 21.6.2016 it was directed that the case shall proceed ex parte.

3. Today on behalf of the management an application has been filed to dismiss this reference for default and for non-prosecution on the part of the workman. In view of the provision of sub-rule 9 of Rule 10-B of the Industrial Dispute (Central) Rules 1957, this reference is being hereby decided finally.

4. Since the Issues have not been framed hence the following issues are hereby framed:

- (1) Whether the action of the management of Postal Department Akola th. Its Sr.Superintendent of Posts in terminating the services of Shri S.T.Wankhade w.e.f. 2.1.2000 is just fair and legal?
- (2) Relief, if any, to which the workman is entitled?

5. In brief the facts as stated by the workman in his statement of claim are as under.

Shri S.T.Wankhede has worked as EDDA at Akola City post office during the period mentioned below:

From	To	Total Days
19.10.1996	04.09.1997	321
08.09.1997	04.11.1997	58
15.11.1997	31.12.1997	47
02.11.1998	31.03.1998	89
01.01.99		85
01.01.2000		40
Total		640

6. In the statement of claim the workman has mentioned, in detail, about the correspondence which he has made with the different authorities but the same ended in failure. On the basis of the aforesaid working period, he has made a prayer as under.

“Keeping in view what has been mentioned by us in para 15 above and as Mr.Wankhade has completed more than 240 days during one calendar year i.e. 1997. Mr.Wankhade should therefore get permanent employment in Post Office as per section 25 of the I.D.Act 1947”

Thus the claim is that Mr.Wankhade be provided permanent employment in the post office.

7. On behalf of the management it has been submitted that the claim of the workman is hopelessly barred by time and it has been moved after 14 years. It is pleaded that the second party was never employed by the first party. The first party merely approved the arrangement made by 2 GDS at Akola City post office while taking authorized leave and alleged that the second party who worked in their place as a substitute during their leave and payment would be paid to second party at the minimum rate applicable to the GDS. In return, the GDS would be deemed to be on duty without any break and this arrangement was made in pursuance to the then existing rules. There was neither any employment nor any termination or removal of Mr.Wankhade by the management. It was ex-gratia friendly arrangement between second party and the 2 GDS which was only approved by the first party. Such an ex-gratia agreement neither constituted a valid enforceable contract nor confer any right on the workman to claim permanent employment in the post office. On behalf of the management several other grounds have also been taken in their written statement and any rejoinder to this Written statement has not been filed meaning thereby the facts mentioned in the written statement have not been controverted on behalf of the workman.

8. **ISSUE NO. 1:** The perusal of the statement of claim itself shows that the workman had worked from 1.1.1997 to 4.9.1997 for 247 days and thereafter he has never worked in any succeeding year for 240 days. He has not even crossed 100 days in one calendar year. The pleadings on behalf of the management that he worked as substitute for other GDS and management only approved the said proposal filed by the GDS for which he was paid finds support from the period for which Mr. Wankhade worked in different years.

9. Keeping in view the facts stated above, it cannot be concluded that Mr.Wankhade was appointed at any point of time in the services of post office. It has nowhere been pleaded by the workman that he was appointed on a particular date by the post office and continued to work thereafter regularly without any break. Thus according to the admitted facts as mentioned in the statement of claim the workman has not worked for 240 days in any calendar year after 1997. He has raised this dispute in the year 2014 so it is highly delayed and stale. Virtually there exists no relationship of workman and the employer between the workman and the post office. Consequently, there was no termination of service of the workman by the post office. Thus the workman has absolutely no right to claim for permanent job in the post office. The reference deserves to be answered accordingly.

10. **ISSUE NO.2:** Keeping in view the finding on the Issue no.1 the workman is not entitled to any relief.

11. Reference is answered accordingly.

JUSTICE S. V. S. RATHORE, Presiding Officer

नई दिल्ली, 10 अगस्त, 2017

का.आ. 1920.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार हिंदुस्तान इंसेक्टिसाइड लिमिटेड एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय नं. 1, मुंबई के पंचाट (संदर्भ संख्या 1/47 ऑफ 2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.05.2017 को प्राप्त हुआ था।

[सं. एल-42011/49/2012-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 10th August, 2017

S.O. 1920.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 1/47 of 2012) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Mumbai as shown in the Annexure, in the industrial dispute between the employers in relation to the Hindustan Insecticides Ltd. and their workman, which were received by the Central Government on 31.05.2017.

[No. L-42011/49/2012-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

Present : JUSTICE SURENDRA VIKRAM SINGH RATHORE, Presiding Officer

REFERENCE NO. CGIT-47 OF 2012

Parties : Employers in relation to the management of Hindustan Insecticides Ltd

And

Their workmen

Appearances :

For the first party /Management : Mr. A.M.Jalsadgi Adv.

For the workmen : Mr.K.P.Gurav, Adv.

State : Maharashtra

Mumbai, dated the 05th day of May, 2017.

AWARD

1. As per the schedule of the reference the following industrial dispute was referred to this Tribunal:

“Whether the action of the management of M/s Hindustan Insecticides Ltd. Rasayani, Raigad denying the benefits of either workmen category or the M-1 (M&S) category to the workmen enlisted in Annexure- A is justified? If not, what benefits and privileges the said workmen are entitled to?”

2. On behalf of the workmen, an application is moved today which is being reproduced as under.

1. That the second party union does not wish to proceed in to the matter as the first party company has agreed to discuss with second party union and solve amicably all the disputes of M-1 category employees including the dispute involved in this reference with the union upon disposal of this reference.
2. In view of this, the second party hereby prays that this Hon'ble Tribunal be pleased to dispose off the reference as not pressed for. This hon'ble Tribunal be pleased to dispose off the reference as the second party is no more interested in proceeding with the reference. The award may be passed accordingly.
3. Since parties have settled the dispute and praying that the reference may be disposed of, therefore, with the consent of the parties the reference is hereby disposed of as per the terms of the application as not pressed.
4. Reference is answered accordingly.

JUSTICE S. V. S. RATHORE, Presiding Officer

नई दिल्ली, 10 अगस्त, 2017

का.आ. 1921.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आर्टिलिफिसिअल लिंब सेंटर एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 1, मुंबई के पंचाट (संदर्भ संख्या 1/17 ऑफ 2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20.06.2017 को प्राप्त हुआ था।

[सं. एल-42011/191/2012-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 10th August, 2017

S.O. 1921.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 1/17 of 2013) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Mumbai as shown in Annexure, in the industrial dispute between the employers in relation to the Artificial Limb Centre and their workman, which were received by the Central Government on 20.06.2017.

[No. L-42011/191/2012-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

Present : JUSTICE SURENDRA VIKRAM SINGH RATHORE, Presiding Officer

REFERENCE NO. CGIT-17 OF 2013

Parties: Employers in relation to the management of Artificial Limb Centre
And
 Their workmen

Appearances :

For the first party /Management : Mr. H.D.RAthod, Adv.
 For the Union : Mr.Jaiprakash Sawant, Adv.
 State : Maharashtra

Mumbai, dated the 7th day of June, 2017

AWARD

- As per the schedule of the reference the following industrial dispute was referred to this Tribunal:
 “Whether the action of the management of Artificial Limb Centre, Pune by deducting the wages of the workers for late attendance is legal and justified? If not, to what relief the workmen are entitled to?”
- On behalf of the workman the President , Artificial Limb Centre Union has filed Statement of Claim of the workman wherein it has been stated that the Artificial Limb Centre, Pune is functioning under the Ministry of Defence and is an ‘industry’. The employees are governed under the Civil Defence Service (Industrial Employees) Leave Rules 1954 for the purpose of leave. The holidays of industrial employees of first party are wages paid holidays hence the holidays are counted against the leave if comes between leave periods when individual workmen availing any kind of leave except casual leave. The first party deducting the wages for late attendance by arriving one day pay on the basis of calculation on number of working day of the month instead of number of days of the month which increased the amount of deduction and it is not correct when the holidays are termed as paid holidays to arrive the per day wages. The formula of deducting the wages was not based on any Rule but it was based on the formula given by the local audit authority. This issue was taken up in the VI level JCM council whose Chairman is the first party and it is stated that the matter is taken up with local audit authority and their reply is awaited. The first party provided the copy of the reply received from local audit office and according to the direction, the said deduction are carried out and rules and regulations of the same is not provided. Hence, it is not correct by JCM Forum. Again, the matter was raised before the JCM forum in the month of January 2012 which yield no result. The following prayer is also made in the Statement of Claim.
 - To provide the rules and regulation under which the existing formula derived for deduction of wages for late attendance of second party.
 - The Holidays are wages paid for workmen hence the calculation of per day wage should be reckoned on the number of days of month not on the basis of number of working days of the month.
 - For hour late 1/8 of wage of the day need to be deducted instead of whole day wages.
 - Direct the first party to pay the wages different from the date of implementation of erroneous formula under which late attendance wage deducted to the affected workmen of first party.
- In its written statement filed on behalf of the management, it has been pleaded that the wages of late attendance are deducted as under:

Upto 15 minutes	-	No deduction.
For 15 to 30 minutes	-	Deduction of 15 minutes basic pay + Grade Pay of the working day.
From 30-45 minutes	-	45 minutes of the Basic pay and Grade pay + DA
More than one hour	-	deduction of 1 day wages.

 This deduction of wages formula has been introduced by the local authority vide their letter No.F.No.D.19015/2/2010-GAR Government of India, Ministry of Finance, Department of Revenue GAR Section. It has been pleaded that the point of deduction of wages was done by the level of JCM and it was again confirmed by the local audit authority. It has also been pleaded that the deduction of wages for late attendance is done on the basis of calculation of number of working days of the month instead of number of days of the month which increases the amount of deduction. It is not correct that the holidays are termed as paid holidays to arrive per day wage.

- In this matter, the Union has failed to appear on some dates, therefore, vide Order dated 9.5.2017, the following Issues were framed
 - Whether the action of the management of Artificial Limb Centre, Pune by deducting the wages of the workers for late attendance is legal and justified?

2. Relief if any, the workman is entitled to?

and it was directed that the case shall proceed ex parte against the workman and opportunity to lead evidence was given to the first party. Thereafter on 5.6.2017, an application was moved on behalf of the management that the Management does not intend to adduce any evidence because they have no case to meet out. Thereafter the arguments were heard. The Issues are being decided on the basis of pleadings and material on record.

5. **ISSUE NO.1** : Learned counsel for the management has argued that as per the provisions of the Payment of Wages Act, the deductions can be made for late attendance. He has drawn the attention of this Tribunal towards Section 7 and Section 9 of the Payment of Wages Act 1936, which provides for deductions for absence from duty. It is an admitted case of the management that the deduction of wages is being made on the basis of the actual working days of the month excluding the holidays. Keeping in view the statement of claim filed on behalf of the Union, the main grievance of the workmen is regarding the calculation of one day wages on the basis of actual working days. The submission of the learned counsel for the management is that they do not have any case to meet out has no substance because law is settled on the point that the facts admitted need not to be proved. In this case, the main grievance of the Union is that one day wages are being calculated on the basis of actual working days of the month and not on the basis of total number of days of a month. It is admitted to the management in its written statement that one day wages are being calculated according to the actual working days of the month.

6. In support of this procedure for calculation of wages for one day, learned counsel for the management has argued that the calculation of one day wages on the basis of actual working days would make very minor difference in the calculation of one day wages and virtually it is not going to affect any disciplined workman. This grievance has been raised on behalf of indisciplined workmen who are in the habit of remaining absent because such decision affects them.

7. According to the provisions of Minimum Wages Act, 1948 (Section 3 sub-clause 3 b) Minimum Wages rates of wages may be fixed by any one or more of the following wage periods namely;

- (i) by the hour,
- (ii) by the day,
- (iii) by the month, or
- (iv) by such other larger wage-period as may be prescribed;

It is nowhere the case of the Management that the wages of the workmen were fixed on the basis of per day wages. Admittedly, when the monthly wages are fixed then it would mean that calculation of one day wage has to be made on the basis of total days of the month and not on the basis of actual working days which could have been done only in cases where the wages have been fixed on the basis of per day wages.

8. So far as the deduction for late attendance is concerned, there is no legality in deducting wages for late attendance. Learned counsel for the management has drawn our attention towards letter dated 31.3.2013 which shows that to ensure the discipline in the industry Biometric Control System was installed. After the introduction of Biometric System the local audit authority has introduced formula for deducting wages for late attendance. Artificial Limb Centre is a Defence organization and strict discipline has to be maintained in such organizations and deduction of wages is only a method to ensure discipline virtually it is not a punishment as it is not a fine but it is for the purpose that the workman must come to duty on time. The formula introduced by the local audit authority has been implemented and a person who is coming late without a valid and just reason cannot raise a grievance that his wages have been wrongly deducted, therefore, the deduction of wages for late attendance cannot be said to be illegal or irregular. Apart from it Union has not led any evidence to show that such a procedure is incorrect or is against rules. So far as the calculation of one day wage on the basis of actual working days of the month is concerned this Tribunal is of the considered view that this approach of the management does not find support from any law or any other Act nor any such law could be brought to the notice of this Tribunal during the course of the argument on behalf of the management. Therefore, this reference is accordingly answered.

- (a) The action of the management of Artificial Limb Centre, Pune by deducting the wages of the workers for late attendance is legal and justified.
- (b) So far as the dispute regarding the calculation of the wages on the basis of the actual working days is concerned, this action of the management is not legally supported and is not justified.

9. **ISSUE NO.2** : In view of the aforesaid finding the workmen are entitled to the difference of their wages which has been deducted on the basis of actual working days of a month instead of actual days of a month. The management shall re-calculate the amount of wages actually deducted and ought to have been deducted keeping in view the number of working days of a month and the difference of excess amount deducted shall be refunded to the workmen at the earliest.

10. Reference is answered accordingly.

JUSTICE S. V. S. RATHORE, Presiding Officer

नई दिल्ली, 10 अगस्त, 2017

का.आ. 1922.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक, मैसर्स दमानी शिपिंग प्राइवेट लिमिटेड, होमजी स्ट्रीट, फोर्ट, मुंबई व अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, मुंबई के पंचाट (संदर्भ संख्या 2/10 ऑफ 2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.08.2017 को प्राप्त हुआ था।

[सं. एल-42011/161/2013-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 10th August, 2017

S.O. 1922.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 2/10 of 2014) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai as shown in Annexure, in the industrial dispute between the employers in relation to the Director, M/s. Damani Shipping Pvt. Ltd., Homaji Street, Fort, Mumbai & Others and their workmen, which were received by the Central Government on 03.08.2017.

[No. L-42011/161/2013-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

Present : M. V. Deshpande, Presiding Officer

REFERENCE NO. CGIT-2/10 of 2014

EMPLOYERS IN RELATION TO THE MANAGEMENT OF
DAMANI SHIPPING PVT. LTD.

The Director,

M/s. Damani Shipping Pvt. Ltd.,
205/206, Verma Chambers, II,
Homaji Street, Fort, Mumbai.

The Director,

M/s. Shipping Services
205/206, Verma Chambers, II,
Homaji Street, Fort, Mumbai

AND

THEIR WORKMEN

The Secretary,
Bharatiya Kamgar Karamchari
Mahasangh, Navalkar Lane,
1st Floor, Prathana Samaj, Girgaon
Mumbai – 400 004.

APPEARANCES :

FOR THE EMPLOYER : None

FOR THE WORKMEN : Mr. S.A. Sawant, Advocate

Mumbai, dated the 28th June, 2017

AWARD

1. This is reference made by the Central Government in exercise of powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Government of India, Ministry of Labour & Employment, New Delhi vide its order No. L-42011/161/2013 – IR (DU) dated 10.02.2014. The terms of reference given in the schedule are as follows :

“Whether the demand of Bharatiya Kamgar Karamchari Mahasangh for enhancement of the wages of Shri Dattu S. Dhumal, Sh. Dattaram R. Patil, Sh. Nirajan Khandare and Sh. Narayan S. Gavande at par with the wages revised as per Memorandum of Settlement dated 29.04.2008 signed between the Bombay Customs House Agents Association and Transport & Dock Workers’ union is legal, just and proper ? If so, what relief the workmen concerned are entitled to ?“

2. After the receipt of the reference, both the parties were served with the notices. Second party workmen filed statement of claim Ex.7.

3. It appears that second party workmen are the employees of first party company. According to them, since last 3 decades number of periodical wages settlements were signed between Bombay Customs House Agents Association and Transport & Dock Workers’ union. Last such settlement was dated 29.04.2008. Majority of clearing and forwarding agency companies and their workmen have accepted the terms & conditions of said settlement dated 29.04.2008 and have accepted the benefits of same being fair and reasonable settlement. So according to the second party workmen, said settlement dated 29.04.2008 between Bombay Customs House Agents Association and Transport & Dock Workers’ union is legal, fair and reasonable.

4. According to the second party workmen they are entitled to receive full financial and other benefits of the said settlement. Each workman has lost amount of Rs.7586/- and Rs.8679/- per month which comes to Rs.91,000/- to Rs.1,00,000/- approximately per year. Besides, they are entitled to receive ex-gratia payment, LTC, medical benefit as per the said settlement dated 29.04.2008. As such workmen Shri Dattu S. Dhumal is entitled to receive Rs.5,38,606/-, Shri Dattaram Patil is entitled to receive Rs.6,16,209/-, Shri Nirajan Khandare is entitled to receive Rs.5,47,623/- and Shri Narayan Gavande is entitled to receive Rs.5,68,284/-. As such they are entitled to receive total amount of Rs.22,70,722/- for the period of 6 years commencing from 1.4.2008 till 31.3.2014.

5. According to them, each one of them have been deprived of the amount as shown below during the period from 1.4.2008 to 31.3.2014.

Name of workmen	Gross salary as on 31.3.2008	Entitled to Gross salary as on 1.4.2008 as per settlement dated 29 th April, 2008	Loss per month
Shri Dattu S. Dhumal	Rs.8,955.00	Rs.16,532.00	Rs.7,586.00
Shri Dattaram Patil	Rs.9,558.00	Rs.18,237.00	Rs.8,679.00
Shri Nirajan Khandare	Rs.9,736.00	Rs.17,449.00	Rs.7,713.00
Shri Narayan Gavande	Rs.8,951.00	Rs.16,955.00	Rs.8,004.00

6. According to the workmen they have been in the employment of the first party company for more than 20 years. They are required to work for other sister companies floated and registered by Damani family by giving oral instruction. They are in the employment of first party company though their names are not shown deliberately in the list of workmen of first party company, one of sister companies of Damani family.

7. According to the concerned workmen they are the members of trade-union, Bharatiya Kamgar Karamchari Mahasangh, a trade union registered under the Trade Union Act, 1926. They are being represented by the said union. The union representatives approached the Directors of the company and requested them to extend the benefits of the purported settlement of the concerned workmen. They also approached Dy. Commissioner Labour [Central] with a

request to intervene in the dispute and try to bring about amicable settlement. Conciliation failed. The Conciliation Officer submitted failure report. Thereafter the Central Govt. was pleased to refer this dispute to the tribunal.

8. The concerned workmen are therefore asking for financial benefits and other benefits in view of settlement dated 29.04.2008 signed between Bombay Customs House Agents Association and Transport & Dock Workers' union w.e.f. 1.4.2008 which amounted to Rs.22,70,722/- along with interest @21% per annum on the total amount of dues w.e.f. 1.4.2008 till the date of payment.

9. First party company has not filed written statement. First party company remained absent and there was no cross-examination to the witnesses of second party workmen. No W.S. order came to be passed below Ex.8 and reference proceeded further without written statement of management.

10. Following issues are framed at Ex.10. I reproduce the issues along with my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1	Whether the second party workmen in the present matter are entitled to the revision as per Memorandum of Settlement dated 29.4.2008 signed between the Bombay Customs House Agents Association and Transport & Dock Workers' union ?	Yes
2.	Whether the second party workmen are entitled to the amount as claimed by them in the present matter ?	Yes
3.	What Order ?	As per final order

REASONS

Issue No.1 & 2 :-

11. As seen earlier, first party company has not filed written statement. Hence no W.S. order was came to be passed below Ex.8 and the reference proceeded further without written statement of first party company. As such there is no denial of claim by the first party company.

12. In view of that second party workmen has filed affidavit of Shri Narayan S. Gawande at Ex.12. He has reiterated his contentions made by him in the statement of claim. It is clear from his evidence that majority of the workmen in number of clearing and forwarding agency companies are the members of Transport & Dock Workers' union and majority of clearing and forwarding agency companies are the members of Bombay Customs House Agents Association and Transport. Number of periodical wages settlements were signed between Bombay Customs House Agents Association and Transport & Dock Workers' union and last such settlement was dated 29.04.2008. This sort of evidence of the concerned workmen has gone un-challenged and therefore it will have to be held that the said settlement dated 29.04.2008 signed between Bombay Customs House Agents Association and Transport & Dock Workers' union is fair and reasonable settlement.

13. Obviously, the benefits which can be derived from the said settlement are to be given to the concerned workmen till date of retirement and second party workmen are entitled to receive full financial and other benefits from the said settlement.

14. It is clear from the evidence of Shri Narayan S. Gawande that workmen have been deprived of the amount as shown below during the period from 1.4.2008 to 31.3.2014 and therefore they are entitled to receive the amount as follows.

Sr. No.	Name of workmen	Amount
1.	Shri Dattu S. Dhumal	Rs.5,38,606.00
2.	Shri Dattaram Patil	Rs.6,16,209.00
3.	Shri Niranjan Khandare	Rs.5,47,623.00
4.	Shri Narayan Gavande	Rs.5,68,284.00
Total:		Rs.22,70,722.00

15. Considering the evidence of concerned workmen it can be said that they have been in employment of M/s. Damani Shipping Pvt. Ltd. for more than 20 years and therefore they are entitled to periodical wage settlement signed between Bombay Customs House Agents Association and Transport & Dock Workers' union. This sort of evidence has gone un-challenged and therefore it will have to be accepted and there is no good reason to dislodge this version of Shri Narayan S. Gawande.

16. The Learned Counsel for the second party workmen submitted that the concerned workmen are entitled for financial and other benefits in view of settlement dated 29.4.2008 signed between Bombay Customs House Agents Association and Transport & Dock Workers' union dated 1.4.2008. He submits that they are also entitled to interest @ 21% per annum. However, in my considered view they are entitled to interest @ 6% per annum on the total amount of dues w.e.f. 1.4.2008 till date of payment. In view of that I answer the above points accordingly as indicated against each of them in terms of above observations.

17. In the result, I pass the following order.

ORDER

It is declared that the second party workmen are entitled to receive legitimate payment of dues of the concerned workmen amounting to Rs.22,70,722/- along with interest @ 6% per annum on the total amount of dues w.e.f. 1.4.2008 till date of payment.

Date: 28.06.2017

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 10 अगस्त, 2017

का.आ. 1923.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक, राष्ट्रीय पोमेग्रेनेट अनुसंधान केंद्र, सोलापुर (एमएस) व अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, मुंबई के पंचाट (संदर्भ संख्या 2/69 ऑफ 2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.05.2017 को प्राप्त हुआ था।

[सं. एल-42012/68/2014-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 10th August, 2017

S.O. 1923.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 2/69 of 2014) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai as shown in Annexure, in the industrial dispute between the employers in relation to the Director, National Research Centre for Pomegranate, Solapur (MS) & Others and their workman, which were received by the Central Government on 31.05.2017.

[No. L-42012/68/2014-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

Present : M. V. Deshpande, Presiding Officer

REFERENCE NO. CGIT-2/69 of 2014

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

(1) NATIONAL RESEARCH CENTRE FOR POMEGRANATE

The Director
National Research Centre for Pomegranate
Near Solapur University
Solapur (MS).

(2) M/S. SWADESHI SECURITIES

M/s. Swadeshi Securities
 96, SalgarVasti
 Dongaon Road
 Solapur (MS).

AND

THEIR WORKMAN

Smt. Kanchan B. Bhosale
 R/o. Kondi
 Tal. North Solapur
 Maharashtra 413 001.

APPEARANCES:

FOR THE EMPLOYER NO.1 : Mr. S.P. Chinchwadkar, Advocate
 FOR THE EMPLOYER NO.2 : No appearance
 FOR THE WORKMAN : Mr. V.R. Deshpande, Advocate

Mumbai, dated the 10th March, 2017

AWARD

The Government of India, Ministry of Labour & Employment by its Order No.L-42012/68/2014-IR (DU), dated 24.07.2014 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the demand of the workman Smt. Kanchan B. Bhosale for asking regulation as an employee of National Research Centre for Pomegranate, Solapur is legal and justified? If yes to what relief the workman is entitled to?”

2. After receipt of the reference, both parties were served with notice. In response to the notice, Second party workman filed an application (Ex-8) for interim relief and thereafter filed Statement of Claim at Ex-9. First party Management resisted the Statement of claim by filing their Written Statement at Ex-10 and their Say (Ex-11) on IR application. Matter was fixed for filing Written Statement by Management no.2.

3. Today, Advocate for the first party/ management filed application to take the matter on today's board. Second party Workman remained present along with her Advocate. Second party/ Workman filed application in the form of affidavit (Ex-13) requesting to dispose of the Reference as she is not interested in pursuing the matter further. Orders were passed on Ex-13. As the Second Party workman does not want to pursue this matter, the Reference is disposed of. Hence the order:

ORDER

Reference stands disposed of as withdrawn.

Date: 10.03.2017

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 10 अगस्त, 2017

का.आ. 1924.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्थेशन निदेशक, न्यूक्लियर पावर कॉरपोरेशन ऑफ इंडिया लिमिटेड, रावतभाटा, राजस्थान एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 1/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.08.2017 को प्राप्त हुआ था।

[सं. एल-42011/69/2006-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 10th August, 2017

S.O. 1924.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 1/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in Annexure, in the industrial dispute between the employers in relation to the Station Director, Nuclear Power Corporation of India Limited, Rawatbhata, Rajasthan and their workman, which were received by the Central Government on 09.08.2017.

[No. L-42011/69/2006-IR (DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

BHARAT PANDEY, Presiding Officer

I.D. 1/2015

Reference No. L- 42011/69/2006-IR (DU) Dated: 18.12.2014

Shri Vinod Kumar
C/o The General Secretary Paramanu
vidyut Karmachari Union (CITU)
Phase-2 Rawatbhata – 323305 (Raj.)

V/s

The Station Director
Nuclear Power Corporation of India Limited
Rawatbhata, Rajasthan P.O. Anushakti, via Kota
Rajasthan -323303, Rajasthan.

AWARD

7.6.2017

1. The Central Government in exercise of the powers conferred under clause (d) of Sub Section 1 & 2 (A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

“Whether the action of the management of Rajasthan Parmanu Bijilighar, 1 & 4 Rawatbhata in refusing the fixation of pay of Shri Vinod Kumar Parmar, Skilled ‘B’ Sanitary Inspector in the pay scale of Rs. 4500- 7000/- as per the recommendations of 5th Pay commission is legal and justifiable? If not, to what relief the concerned workman is entitled to?”

2. According to statement of claim briefly fact of the case is that applicant Sh. V.K.Parmar, Sanitary Inspector (skilled ‘B’) was appointed on 7.6.99 in unit 3 & 4 of Rajasthan Parmanu Bijilighar. Nuclear Power Corporation of India, Rajasthan had allowed the recommendation of Vth pay commission for fixation of pay scale of the employees of Rajasthan Parmanu Bijilighar.

3. It has been further alleged in para 4 of statement of claim that instead of fixing the pay of the applicant according to recommendation of Vth pay commission applicant was appointed on separate pay scale of Sanitary Inspector (skilled ‘B’) which is 3050-75-3950-80-4590. According to recommendation of Vth pay commission scale of Sanitary Inspector was 4500-125-7000 which was effective w.e.f. 1.1.1996. At the time of appointment applicant was given scale of 3050-75-3950-80-4590 instead of 4500-125-7000 which was in violation of right to equality under Indian Constitution.

4. Further, it has been alleged that applicant made representation dated 5.10.2005 demanding pay scale according to recommendation of Vth pay commission which was not accepted by the department. The demand of the applicant was also raised by union on 22.10.2005 which was not accepted, hence, it has been prayed that order be passed in favour of applicant that his pay fixation be made in the pay scale of 4500-125-7000 according to recommendation of Vth pay commission.

5. In reply to statement of claim appointment of the applicant has been admitted on 7.6.99 & it has also been admitted that recommendation of Vth pay commission was accepted by Nuclear Power Corporation of India Ltd in relation to employees of Rajasthan Parmanu Bijlighar. Rest of the contention of para 2 & 4 to 11 of the statement of claim have been denied.

6. Further, in reply to statement of claim it has been alleged that in the year 1997 under special Recruitment Drive for Schedule Tribe advertisement was made by non-applicant for the post of Sanitary Inspector (skilled 'B') on 4.6.1997 against pay scale of 1150-25-1500 (a scale available in IV Pay Commission). Applicant had applied against above advertisement. Proposal dated 4.5.99 was issued to the applicant for appointment wherein pay scale of Rs. 3050-75-3950-80-4590 (based on Vth Pay Commission) was mentioned in the proposal which was accepted by the applicant. After acceptance appointment letter was issued to the applicant & applicant joined without objection on the post of Sanitary Inspector (skilled 'B'). Later after enforcement of Anand Committee report of Atomic Energy Division of Government of India the pay scale of Sanitary Inspector (skilled 'B') was revised to 3200-80-4900 from 3050-75-3950-80-4590. It has been further alleged that according to revised scale of 3200-80-4900 arrear of difference between 3050-75-3950-80-4590 to 3200-80-4900 was also paid to the applicant which was accepted by him without objection. In view of acceptance of arrear by the applicant he is estopped from raising the present dispute.

7. Applicant was appointed on 7.6.1999 on the post of Sanitary Inspector (skilled 'B') & had raised this dispute after a lapse of 17 years hence, on this alone ground of delay he is not entitled to any relief. It has been further alleged in para 5 of the reply that there are two different pay scale for two separate posts in the cadre of Sanitary Inspector (skilled 'B'). Non-applicant has not violated Right to Equality as given in the Constitution of India. Demand made by applicant is illegal & unjust. It has been prayed that statement of claim of the applicant may be dismissed with cost.

8. Reply to statement of claim was filed by non-applicant on 26.12.2016. On 26.12.2016 applicant was absent. Next date 27.2.2017 was fixed for filing rejoinder & document by applicant. On 26.12.2016 applicant side was absent, hence, copy of reply to statement of claim was not collected by anyone on behalf of applicant.

9. On 27.2.2017, next successive dates 21.3.2017 & 13.4.2017 were fixed for filing rejoinder & document by applicant but none appeared on behalf of applicant on these two dates also. On 27.2.2017 learned representative of non-applicant pleaded that learned representative of the applicant shall not appear on 27.2.2017 hence, case was adjourned in the interest of justice in favour of applicant fixing 21.3.2017 for filing rejoinder & documents. On 21.3.2017 also applicant did not appear & it was observed by tribunal that reply to statement of claim is available on record since 26.12.2016 but it's copy has not been collected by applicant due to continuous absence. In above circumstances, adjourning the case by tribunal on its own motion & providing opportunity to the applicant in the interest of justice, next date 13.4.2017 was fixed for filing rejoinder & document by applicant with observation that if applicant does not file rejoinder & document final disposal of the case will be made by this tribunal.

10. On 13.4.2017 also applicant did not appear. Learned representative of the non-applicant was present. Owing to continuous absence of the applicant opportunity for filing rejoinder & documents was closed with observation that applicant does not appear to be interested in further proceeding of the case. Instead of completely closing further proceeding next date 15.5.17 was fixed for evidence of the applicant.

11. On 15.5.17 both the parties were absent & learned counsel were out of work on account of condolence, hence, 23.5.17 was next date fixed for evidence of the applicant. On 23.5.17 applicant was absent & learned representative of non-applicant was present. Presiding Officer was on leave. Next date 6.6.17 was fixed for evidence of the applicant. On 6.6.17 also applicant did not appear. Learned representative of non-applicant was present. Looking into fact that applicant is not taking any interest for disposal of the case except filing of statement of claim, further opportunity of furnishing evidence by applicant was closed.

12. I have heard the learned representative of the non-applicant & perused the record carefully.

13. It has been argued by learned representative of the non-applicant that after filing statement of claim none has appeared on behalf of applicant for further progress of the case & applicant does not appear to be interested in disposal of the case. It has been further argued that applicant is not entitled to relief claimed because statement of claim is devoid of merit & based on unjust & illegal considerations, hence, liable to be dismissed with cost.

14. From perusal of record it appears that on 13.8.15 next date 10.11.2015 was fixed for statement of claim & filing of authority to represent on behalf of both the parties. It was alleged on behalf of applicant that authority to represent the applicant & statement of claim by applicant will be filed on next date 10.11.2015. Before 10.11.2015 statement of claim was filed by applicant on 31.8.2015 & on 10.11.2015 none appeared on behalf of applicant. Learned representative for non-applicant was present. Due to condolence work was collapsed & 11.1.16 was next date fixed for

filings reply to statement of claim. After 11.1.2016 next successive dates 16.2.16, 25.4.16, 18.7.16, 3.10.16, 28.11.16 & 26.12.16 were fixed for further proceeding in the case but applicant did not appear on all these dates also.

15. Due to lack of interest in further advancement of the case & absence of evidence in support of statement of claim, I am of the view that applicant has failed to prove that action of the management of Rajasthan Parmanu Bijlighar, 1 & 4 Rawatbhata in refusing the fixation of pay of Shri Vinod Kumar Parmar, skilled 'B' Sanitary Inspector in the pay scale of Rs. 4500-7000/- as per the recommendations of 5th Pay Commission is illegal and unjustified. Applicant is not entitled to any relief & Statement of claim of the applicant is liable to be dismissed. Accordingly, statement of claim of the applicant is dismissed.

16. Award as above.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 11 अगस्त, 2017

का.आ. 1925.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सभी कर्नाटक ग्रामीना बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ संख्या 17/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.08.2017 को प्राप्त हुआ था।

[सं. एल-12011/43/97-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 11th August, 2017

S.O. 1925.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 17/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of All Karnataka Grameena Bank and their workmen, received by the Central Government on 11.08.2017.

[No. L-12011/43/97-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIUBNAL-CUM-LABOUR COURT, BANGALORE

DATED : 26th JULY, 2017

PRESENT : Shri V. S. RAVI, Presiding Officer

C.R. No. 17/2005

I Party

Workman of 9 Gramina Banks,

Represented by:

The General Secretary

All Karnataka Grameena Bank

Employees Federation,

No. 33/15, 3rd Cross,

Gandhinagar,

Bellary – 583103

Represented by : General Secretary

II Party

1. Management of Cauvery Gramina Bank

No. 314, Dewan's Road, Mysore – 570024

2. Management of Krishna Gramina Bank,

Plot No. 6, N.V. Layout, Gulbarga – 585103

3. Management of KalpatharuGramina Bank,

PrasadaNilaya, B.H. Road, Siddanganga

Extension, Tumkur – 572101

4. Management of Tungabhadra Gramina Bank,

Sanganakal Road, Gandhinagar, Bellary – 583103

5. Management of Malaprabha Gramina Bank,
Belgaum Road, Mruthunjayanager, Dharwad – 580007
6. Management of Chitradurga Gramina Bank,
V.P. Extension, Chitradurga – 577501
7. Management of ChikoGramina Bank,
I.G. Road, Chikmagalur – 577101
8. Management of SahayadriGramina Bank,
Shimoga – 577201
9. Management of Visweswaraiah Gramina Bank,
Mandya – 571401

Represented by : Chariman

Advocate for I Party : M/s P.S. Rajagopal

Advocate for II Party:

M/s. K.V. Krishnamurthy & N.B. Bhat

AWARD

1. The Central Government vide Order No.L-12011/43/97-IR(B-I) dated 24.02.2005 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule:

SCHEDULE

“Whether the demand of All Karnataka Gramina Bank Employees’ Federation for appointment of Sweepers in Regional Rural Banks of Karnataka at par with the system of recruitment in the Sponsor Banks is justified? If not, to what relief is the union concerned entitled to?”

2. The brief details mentioned by the I Party/Workman, in the Claim Statement are as follows:

The I Party is the State level Federation of registered trade unions of workmen employed in Gramina Banks, which are established under the provisions of Regional Rural Banks Act, 1976. The I Party states that, despite clear mandate of the Constitution and despite a long time of pronouncements by the Hon’ble Supreme Court of India that equal pay for equal work is a constitutional guarantee and a fundamental right, the Regional Rural banks are paying very low salaries to its employees and there is a rampant exploitation of the work force. Further, Government of India appointed equation committee which equated subordinate staff in the Regional Rural Banks viz., Messengers, Peons and Sweepers with the posts of Messengers, Peons and Sweepers in the Sponsor banks. The Sastry award made a clear categorization of employees as Peons and Sweepers falling in the two separate categories. The Stand of Unions before the Desai Tribunal is set out and it has made clear that there should be no part time employees except Sweepers and Cleaners. In spite of the aforesaid position prevailing in the sponsor banks of every one of the II Party/RPBS, the II Party/Banks are insisting that Peons/Messengers are to do sweeping and scavenging work also. Therefore, the I Party prays that this Tribunal be pleased to accept the reference and pass an award directing the II Party/Banks to appoint Sweepers separately and forbid them from insisting on Messengers/Peons doing work of Sweepers in the interest of justice and equity.

3. Brief details mentioned in the Counter Statements are as follows:-

The II Party states that, the claim of the I Party is misconceived and I Party is not entitled for any relief and the reference is liable to be rejected. It is clear that all the posts of Messengers would be, temporary, on part time daily wage basis. A messenger would be entrusted with duties which are commonly entrusted to messenger, peon or attender in an Organisation. The Sweeper-cum-water boys who have been on daily wage basis, have been appointed as part time messengers after examining their suitability for the post. Those messengers have been governed by Krishna Gramina Bank Service Regulations from time to time. In terms of the appointment order, these Messengers have to perform sweeping, cleaning and watering duties along with other duties. The persons with combined designation in RRB’s shall continue to discharge their duties hitherto or as may be decided by the RRB’s. From the above facts and circumstances, it is clear that the messengers appointed in Krishna Gramina Bank have to perform the duties of sweeper along with their routine duties and Bank shall not appoint separate sweepers for sweeping/cleaning purpose. Further, the II Party states that, I Party is comparing two situations which are not comparable. In any case the Sastry and Desai Award are not applicable to Regional Rural Banks as they are not a party before those Tribunals. There is no prohibition in any of these awards to entrust both the duties to persons

appointed in subordinate staff cadre. The II Party is entrusting both the duties of the same cadre to messengers as per terms and conditions stipulated at the time of appointment. Further, it is pertinent to mention that RRB employees have made a claim before the NIT for 'equal work – equal pay' which has been negated by the Tribunal. As already stated the Tribunal has only directed for 'parity' in the matter of pay scales, allowances and other benefits. The II Party submits that the equation committee appointed by Government of India also has clarified that equation is for the purpose of scale of pay only and the staff shall continue to discharge their duties as hitherto or as decided by the RRBs. Premises of RRB branches are also small, compared to sponsor bank branches. Even as per terms and conditions applicable to sponsor Bank employees there is no restriction for the combination of designation at rural/semi urban branches. The II Party submits that, the entrustment of both the duties to messenger-cum-sweeper is legal and justified. For the reasons stated above, the II Party submits that, there is no justification for appointment of sweepers in RRB's as demanded by the I Party and the reference needs to be rejected. The allegations/averments made by the I Party in the claim statement are not valid. The persons are performing both the duties since their appointment. It is submitted that, for the above mentioned reasons, the II Party is in order in asking the messenger-cum-sweeper to do sweeping and cleaning work. Therefore, the II Party prays that this Tribunal may be pleased to reject the reference and pass an award holding that, the II Party is in order in entrusting both the duties to messenger-cum-sweeper in the interest of justice and equity.

4. The point/issue that arises, for consideration in the present matter is as follows:-

"Whether the demand of All Karnataka Gramina Bank Employees' Federation for appointment of Sweepers in Regional Rural Banks of Karnataka at par with the system of recruitment in the Sponsor Banks is justified? If not, to what relief is the union concerned entitled to?"

5. Analysis, Discussion Findings with regard to the above mentioned point/issue:-

The WW-1 namely, General Secretary, All Karnataka Gramina Bank Employees Federation, has admitted that except the change of names and amalgamation there is no change either in the constitution of the II Party/Banks or the service conditions that are applicable to the workmen employed in these Banks in so far as the subject matter of the reference are concerned. However, the said WW-1 has admitted that, I Party/Workman have been working with the II Party/Bank as Messenger Cum Sweeper since from the date of the respective appointment. Hence, the I Party has to make out a strong ground to get the award in favour of the I Party with regard to the reference made in the present case. Further, WW-1 himself has admitted that, it is true that as per the terms of the appointment order the Messenger Cum Sweeper, initially, have been taken as daily wagers and then as part time sweepers and then, they have been made as full time sweepers. As per Ex W-12, WW-1 has filed National Industrial Tribunal award extracts. However, WW-1 has admitted that as per the said award the I Party/Workman have raised their grievances to regularize their services to full time Messenger Cum Sweeper only and no case has been made out by the I Party/Workman before the said committee that they are not to be assigned the work of sweeping. Further, in Ex W-2, in the Annexure- I, Messengers/Peon/Sweepers are only mentioned in the sub-staff in the equation of post, in RRBs VIS-A-VIS Sponsor Banks.

6. Further, WW-1 has admitted that, it is true to suggest that before the Committee and as per the NIT award, there has been no reference about the method or recruitment to the Regional Rural Bank. Furthermore, WW-1 has admitted that, the NIT award has been passed with respect to the pay scale and equation of post in between RRB staff and staff of the commercial banks. Further, I Party has filed Ex W-9 Sastry Award and Ex W-10 Desai Award extracts and Ex W-15 is the Bipartite Settlement. However, WW-1 himself has admitted in his evidence that, Sastry Award and Desai Award and Bipartite Settlement referred in his affidavit are all pertain to Commercial Banks staff only and I Party/Workman are not parties to the said awards and settlements. Further, WW-1 has admitted that the notification of Ex W-4 is binding on the I Party/Workman. In the said Ex W-4 Messenger Cum Sweeper(full time) and Messenger Cum Sweeper(part time) have been classified as Group-C staff. As per the Ex W-4 itself already there existed Messenger Cum Sweeper post as clearly admitted by WW-1. Further, WW-1 has clearly admitted that there is no restriction as per the report and NIT award, for combined post like Messenger Cum Sweeper, etc., Further, WW-1 has admitted that the claim is based on equation committee report and the copy of which is taken and marked on behalf of II Party and it is true to say that, claim of the I Party before the equation committee and before the NIT, has been with respect to the equation of post, pay and allowances on par with the staff of commercial banks and also WW-1 has admitted that he has not produced any document to establish that, the Krishna Grameena Bank, messengers are affiliated to the I Party federation. Further, WW-1 has admitted that as per the appointment orders issued by the Krishna Grameena Bank, they are Messenger-Cum-Sweeper. Hence, it is seen that, the evidence of WW-1 and also, material records, are not strong enough to justify the claim made by the I Party in the claim statement.

7. On the other hand MW-1 namely, the Senior Manager of Pragathi Grameena Bank, has clearly stated that in exercise of the powers under section 17(1) of the said RRB Act the II Party has appointed the I Party/Workman as Messenger Cum Sweeper initially on daily wages and subsequently regularized as full time Messenger Cum Sweeper

and they have been discharging the duties of Messenger Cum Sweeper, since their first posting, which includes sweeping, cleaning of the bank premises and keeping the premises, furniture, ledger etc., clean and tidy. Further, MW-1 has clarified that, as per the service conditions applicable to the sponsor bank employees there is no prohibition for appointment of employees with combined designation such as Peon cum Sweeper as could be seen from Para 20 of the Third Bipartite Settlement. Further, MW-1 has specifically stated in his evidence that, the equation specified is only for the purpose of identification of relevant pay scales applicable to sponsor bank sub staff and the personnel(I Party Workman) with combined designations in RRB's shall continue to discharge their duties as hitherto or as may be decided by RRB as pointed out in para 2.7.9 of equation committee report. Further, MW-1 has also specifically deposed that in terms of sec 17(1) of RRB Act, it is the absolute right of the II Party/Bank to appoint such employees as are necessary for performance of its function and to determine the terms and conditions of their appointment and service and the II Party since inception has been appointing the I Party/Workman with combined designation of Messenger Cum Sweeper only and they continue to discharge the duties assigned to the said post which includes sweeping and cleaning. The said submission made by MW-1 is also not disproved by the I Party in an appropriate manner.

8. Further, MW-1 has particularly stated as per the notification marked as Ex W-4, the I Party/Workman have been categorized under Group C and as per the said notification II Party/Bank is in order in employing I Party/workman as Messenger Cum Sweeper and entrusting them with sweeping duties and the claim of the I Party/Workman, not to entrust them with sweeping duties and to create a separate cadre of sweepers, is not justified, as per the service conditions, applicable to their employment with II Party/Bank realm. Further, MW-1 has specifically pointed out that, as per Ex M-1 appointments are made on daily wages basis as messengers and sweepers and also, they have been confirmed as messenger and sweepers alone. Further, MW-1 states that, it is not true to suggest that, as per Ex W-3 the Messenger and Sweepers have been given separate designations and as per Ex W-6 there is combined designation for Messenger Cum Sweeper. Further, MW-1 has specifically stated that, it is not true to suggest that the cadre of the sweepers is independent of the cadre of messengers as per the Rules and Settlements applicable to them. Further, MW-2 namely, Officer of Chikmagalur Kodagu Grameena Bank, has clearly pointed out that, if the separate sweepers is acceded to, then, not only it will result in underutilization of manpower but also, will cause additional financial burden to the II Party, a public financial institution and will be against public interest. On a careful perusal of the material records it is found that, there are substantial force in the said submissions of MW-1 and MW-2.

9. Further, MW-3 namely, Officer of Karnataka Vikas Grameena Bank, has clearly stated in his evidence that, the service conditions of the sponsor bank employees and the II Party Bank employees are distinct and different, and there is no prohibition for appointment of employees with combined designation such as Peon Cum Sweeper etc., Further, MW-4 namely, Chief Manager (Personnel) of Cauvery Kalpatharu Grameena Bank, and MW-5 namely, Manager Personnel of Visvesvaraya Grameena Bank have also stated about the above mentioned details mentioned by the II Party witnesses. Further in Ex M-1 to Ex M-9 the appointment orders itself it is clearly stated that, the person appointed as messenger has to keep the office premises clean and tidy, cleaning furniture etc., including toilet and the said terms and conditions have been accepted by the workman also. In Ex M-10 and Ex M-11, it is stated that, the workman has to keep the branch office clean and tidy and to bring water for drinking and toilet and in Ex M-11, the workman has specifically admitted to work as probationary messenger cum sweeper as per the terms and conditions stated therein. In Ex M-15, Equation Committee Report also it is pointed out that, the personnel with combined designations in RRBs shall continue to discharge their duties as hitherto or as may be decided by the RRBs. In Ex M-19 also, it is clearly stated that, I Party/Workman have been converted into full time Messenger Cum Sweeper to do the duties of keeping the office premises clean and tidy, cleaning furniture etc., including toilet. Further, as per Ex M-17 dated 08.10.1987, the Probationary Messenger Cum Sweeper terms and conditions have been accepted by the individual workman and as per Ex M-18 appointments have been given to workman as Messenger Cum Sweeper on 23.07.1981 with the duties of Sweeping the office premises and keeping tidy office premises, furniture etc., including toilet and the said terms and conditions have been accepted by the workman also.

10. In the above mentioned facts and circumstances, it is seen that, after getting the appointment as Messenger Cum Sweeper, now the I Party cannot claim that the II Party shall not insist the said workman to do the work of sweepers. Further, on perusal of entire material records it is seen that, Sweepers are not a separate category of employees and I Party/Workmen have been appointed and also performing the duties as Messenger Cum Sweeper as per the terms of the appointment from the year of 1982 onwards for several years and in fact, the workers have also clearly accepted the terms and conditions of the said appointments. Further, on a careful perusal of materials brought on record, it is seen that, the I Party has not made out a case to accept the submissions made in the claim statement. Further, I Party has also admitted that, the claim is not based on the Sastry and Desai Award. Further the provisions of RRB act, NIT Award, Equation Committee Report, Sastry and Desai Award are not applicable to the sponsor bank employees and there is no prohibition in employing persons as messengers cum sweepers by II Party/Bank and none of the provisions, support the claim of the I Party herein. As per Ex W-4 also the post of Messenger Cum Sweeper is categorized under Group C and there is no separate category of sweepers and WW-1 has also admitted in cross-examination that, even

under NIT Award, the separate category of sweepers is not provided. Even Ex W-6 and Ex W-8 are not supporting the claim of I Party herein. The provisions of Desai Award, admittedly, are not applicable to II Party employees. Further, the II Party has to appoint persons keeping in view their requirements and utility and for effective operation of its function. Further, the combined entrustment of duties is not prohibited by any law/statue. Hence, the II Party is justified in employing the I Party/Workman as Messenger Cum Sweeper. Further, on the totality of the above mentioned facts and circumstances and also after taking into consideration the evidence and Exhibits mentioned herein below, in proper prospective, the following award is passed.

AWARD

The demand of All Karnataka Gramina Bank Employees' Federation for appointment of Sweepers in Regional Rural Banks of Karnataka at par with the system of recruitment in the Sponsor Banks is not justified and hence, the reference is rejected, without costs, for the above mentioned peculiar facts and special circumstances of the present matter.

(Dictated, transcribed, corrected and signed by me on 26th July, 2017)

V. S. RAVI, Presiding Officer

List of Witness on the side of I Party:

WW1	Sh. Ganapathy Hegde, General Secretary/I Party
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List of Witness on the side of II Party:

MW1	Sh. B. Rajashekappa, Senior Manager of Pragathi Grameena Bank
MW 2	Sh. D.A. Ramachandra Murthy, Officer of Chikmagalur Kodagu Grameena Bank
MW 3	Sh. K. Prasad, Officer of Karnataka Vikas Grameena Bank
MW 4	Sh. Siddaramegowda, Chief Manager (Personnel) of Cauvery Kalpatharu Grameena Bank
MW 5	Smt. K. Vimala, Manager-Personnel of Visveshvaraya Grameena Bank

Exhibits marked on behalf of I Party

Exhibits	Date	Description of Document
Ex W-1	12.09.2005	Copy of Gazette Notification
Ex W-2	22.02.1991	Copy of Government Order No. 11-3/90 - RRB(1)
Ex W-3	28.09.1988	Copy of the Notification of Recruitment & Promotions Rules – 1988
Ex W-4	29.07.1998	Copy of the Notification of Recruitment & Promotions Rules - 1988
Ex W-5	20.03.1993	Copy of the NABARD central office order/guidelines No. NB. IDD.RRCBD No. C. 4559/316/Gen/92-93
Ex W-6	-	Tungabhadra Gramin Bank Service Regulations, 2000
Ex W-7	06.05.2000/ 14.08.2001/ 18.08.2004/ 18.11.2005	Four orders relating to Revision of Daily wages & Sweeping Charges
Ex W-8	01.06.19991 8.08.2005	Two circulars relating to Enhancement of Sweeping Charges
Ex W-9	-	Sastry Award extracts
Ex W-10	-	Desai Award extracts
Ex W-11	-	Canara bank Hand book on staff matters

Ex W-12	-	National Industrial Tribunal Award extracts
Ex W-13	12.11.1991	Letter from I Party to N.A.B.A.R.D
Ex W-14	22.04.1992	Conciliation Proceedings
Ex W-15	01.08.1979	Third Bipartite Settlement Copy

Exhibits marked on behalf of II Party

Exhibits	Date	Description of Document
Ex M-1	16.02.1982	Appointment order of Sh. Halli Shelarappa & proceedings of Chairman
Ex M-2	26.08.1982	Appointment order of Sh. Bheemaraya & proceedings of Chairman
Ex M-3	21.02.1983	Appointment order of Sh. K Pakirappa & proceedings of Chairman
Ex M-4	11.09.1984	Appointment order of Sh. S Pampana gouda & proceedings of Chairman
Ex M-5	08.02.1985	Appointment order of Sh. Sharanayya & proceedings of Chairman
Ex M-6	08.02.1985	Appointment order of Sh. Vajendracharya & proceedings of Chairman
Ex M-7	21.03.1986	Appointment order of Sh. Abdul Gani & proceedings of Chairman
Ex M-8	18.08.1987	Appointment order of Sh. A Vamadevappa & proceedings of Chairman
Ex M-9	28.07.1988	Appointment order of Sh. Rudrappa & proceedings of Chairman
Ex M-10	01.04.1991	Appointment orders of Sh. L Peter, ShNarasappa, ShAnjaneya & proceedings of Chairman
Ex M-11	09.05.1992	Appointment order of Sh. Maruthi Doddamani & proceedings of Chairman
Ex M-12	-	Bipartite Settlement applicable to banks employees
Ex M-13	-	True extract of paragraph 4.148 of NIT Award
Ex M-14	-	True extract of paragraph 4.421 of NIT Award
Ex M-15	-	True extract of point 2.7.9 of equation committee report
Ex M-16	-	The Regional Rural Banks Act, 1976
Ex M-17	08.10.1987	Letter No. 4792/PSD/F.97 from II Party
Ex M-18	23.07.1981	Appointment as Messenger – cum – Sweeper
Ex M-19	22.12.1993	Letter relating for conversion of P.T.R.M.S to full time Messenger – cum – Sweeper
Ex M-20	14.07.2010	Letter of Authority
Ex M-21	10.08.2007	Proceedings of Chief Manager of Cauvery Kalpatharu Grameena Bank

नई दिल्ली, 11 अगस्त, 2017

का.आ. 1926.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कावेरी कलापात्रसु ग्रामीन बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ संख्या 01/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.08.2017 को प्राप्त हुआ था।

[सं. एल-12012/103/2011-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 11th August, 2017

S.O. 1926.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 01/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Cauvery Kalpatharu Grameena Bank and their workmen, received by the Central Government on 11.08.2017.

[No. L-12012/103/2011-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIUBNAL-CUM-LABOUR COURT, BANGALORE

DATED : 21st JULY, 2017

PRESENT : Shri V. S. RAVI, Presiding Officer

C.R. No. 01/2012

I Party/Workman

Sh. Mahadevaswamy,
S/o. Late Maallanna,
Habbasur Village,
Chamarajanagar
Taluk & District,
Karnataka

Advocate for I Party:

Mr. B. Krishna & Mrs. Geetha Krishna

II Party/Management

The Chairman,
Cauvery Kalpatharu Grameena Bank,
Head Office, CA-20,
Vijaynagar 2nd Stage,
Mysore – 570017

Advocate for II Party :

Mr. N. Srinivasa Rao

AWARD

1. The Central Government vide Order No.L-12012/103/2011-IR(B-II) dated 11.01.2012 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

SCHEDULE

“Whether the action of the management of Cauvery Kalpatharu Grameena Bank, Mysore, Karnataka is justified in imposing the punishment of removal from services w.e.f 17.06.2008 upon Shri Mahadevaswamy, is legal and justified? To what relief the workman is entitled to?”

2. Brief details mentioned in the claim statement are as follows:-

The I Party/Workman joined services w.e.f 28.08.1983 with the II Party/Management and at the relevant point of time he has served as Messenger Cum Sweeper at Cauvery Kalpatharu Grameena Bank at Chamarajanagar Branch. The Charge Memo dated 09.10.2006 has been issued, framing as many as 8 false charges. The Workman's ignorance has been virtually exploited and statements have been obtained forcibly under, threat and coercion. Further, it is submitted that, without conducting any proper enquiry and without issuing the appropriate charges and without examining material witness, a very strong reliance has been placed upon the Pre-recorded statements. The II Party has obtained the Complaint from Smt. Shivananjamma just to suit the convenience but in her complaint, she has not stated anything against the I Party. The II Party has virtually failed to drive home the guilt. Thereafter the Disciplinary Authority passed an order of removal from service dated 17.06.2008 and a copy of the same is also submitted. The report drawn by the enquiring authority is perverse and based on, no evidence. The I Party states that, he is totally innocent and he has not committed any misconduct. The I Party's daughter is a Physically Handicapped Child. That, on the account of dismissal from service the education of his children's have been jeopardised and also, the I Party is not gainfully employed. The I Party states that, the alleged loss said to have been caused by the workman has not been

recovered from the I Party, whereas Rs. 40,000/- has been recovered from the concerned official from the Bank who are all the real culprits. Hence, the action of the management in dismissing the services of the I Party/Workman is an act of unfair labour practice as defined under section 2(r)(a) of the Industrial Dispute Act 1947 and it's an act of victimization and unjust depravation of the livelihood guaranteed to the workman. Further, the I Party has not at all played any role in the matter. Further, at the relevant point of time the I Party has not at all present in the bank because he has taken the sick leave. Therefore, the I Party prays this Court to pass an award, directing the II Party/Management to reinstate the I Party into his original post, with continuity of service, and full back wages from the date of removal to till the date of Re-instatement and with all the consequential benefits, in order to meet the ends of justice.

3. Brief details mentioned in the counter statement are as follows:-

The II Party states that, I Party while working with II Party bank at their Chamarajanagar branch as Messenger cum Sweeper has been found to have committed the alleged acts of misconduct. The II Party states that, I Party by involving one Sh. S Pradeep Messenger cum Sweeper of Arkalwadi branch got all the ten cheques filled and obtained signature of the account holder forged by him and fraudulently withdrew a sum of Rs. 40,000/- and misappropriated the same. Further, the I Party in association with Sh. S Pradeep by forging the signature of the depositor in Cheque bearing no 82118 withdrew from the S.B. A/c of Smt. Shivananjamma, A/c No. 2679, Rs. 2000/- and thus defrauded the bank. The II Party states that, I Party by his above acts failed to serve the bank honestly and faithfully and also, committed misconduct in terms of the banks service regulations. The II Party states that, I Party after receipt of the charge sheet and in reply thereto, by submitting a letter received on 27.01.2007, admitted, unequivocally, the allegations contained in the charge sheet vide charge nos. 1 and 4. Further, the II Party appointed Mr N. Jayaramu, Senior Manager as Enquiry Officer and Sh. B.R. Sridhar, Senior Manager, appointed as Presenting Officer vide separate proceedings dated 31.01.2007. The II Party/Management produced 39 documents and examined 3 witnesses in support of the charge and the I Party has been afforded an opportunity to cross examine the management witnesses and however the I Party categorically stated that he has nothing to cross examine. The Enquiry Officer submitted his findings on 22.02.2008 holding the I Party guilty of the charges alleged in the charge sheet. The Disciplinary Authority considering all the records concurred with the findings of the Enquiry Officer by drawing a speaking order dated 06.05.2008 and proposed the punishment of "Removal from service which shall not be a disqualification for future employment". Further, the Appellate Authority considering the gravity of the misconduct, found no reasons for interference and upheld the punishment already imposed. Hence, the allegation that, the I Party has not been given opportunity to defend, engage defence representative, admission of guilt has been obtained under threat, coercion and false assurances etc., are all false and hence denied. The allegation made by the I Party that the findings are perverse and not based on the evidence is denied as false. The II Party prays that, the reference be rejected with costs.

4. The points/issues that arise, for consideration in the present matter is as follows:-

- 1) "Whether the II Party/Bank is justified, in imposing the punishment of removal from service of I Party/workman from 17.06.2008? If not, to what relief the workman is entitled to get?"
- 2) "Whether there is perversity of finding, and an act of unfair labour practice, and victimization and malafide action taken by the II Party as against the I Party?"

5. Analysis, Discussion Findings with regard to the above mentioned points/issues:-

The I Party has clearly stated in the claim statement as well as in the evidence that, he has joined the service of II Party on 28.08.1983 as Messenger Cum Sweeper and in the grounds of claim statement the I Party has specifically stated that, the action of the II Party in dismissing the service of I Party is an act of unfair labour practice as defined under section 2(r)(a) of the Industrial Dispute Act 1947 and it's an act of victimization and unjust depravation of the livelihood guaranteed to the I Party. Further, the I Party has clearly stated in the claim statement as well as in the evidence that he has not committed any misconduct as alleged in the charge sheet dated 09.10.2006 and the II Party virtually failed to drive home the guilt, and the I Party/workman is totally innocent and the alleged loss said to be committed by the I Party has not been recovered from the I Party, whereas Rs. 40,000/- has been recovered from the concerned official from the Bank who are all the real culprits. The MW-1 namely, the Enquiry Officer has also admitted in his evidence that, it is true to suggest that handwriting report is marked as P-15 and handwriting expert has not been examined and it is true to suggest that in the enquiry Sh. S. Pradeep is not examined. However, in the counter, the II Party has specifically stated that, I Party by involving one Sh. S. Pradeep Messenger Cum Sweeper fraudulently has withdrawn, a sum of Rs. 40,000/- and misappropriated the same. Still, MW-1 Enquiry Officer, has candidly admitted that, the said Sh. S. Pradeep has not been examined in the enquiry. Further, in the claim statement and evidence I Party has pointed out that the enquiry proceedings have been recorded in English and the details of the same have not been translated to the language of Kannada known to the I Party and hence the I Party has been put to serious prejudice.

6. The MW-1 Enquiry Officer, has also admitted that though he has recorded the proceedings in English and he has not explained the same in Kannada to I Party. Further, I Party has specifically pointed out in the claim statement and evidence that, the alleged loss of Rs. 40,000/- has not been recovered from the I Party and the same has been recovered from the concerned official of the Bank. MW-1 Enquiry Officer, also stated that, he cannot right now say what is the loss caused to the II Party/Bank and it is true to suggest that Smt. Shivananjamma has not named the I Party in her complaint. On that ground only I Party has clearly stated in the claim statement and in his evidence that the Smt. Shivananjamma, has not lodged complaint as against the I Party and I Party has not done any misconduct as alleged by the II Party. Further, in the affidavit I Party has clearly stated that by deliberately taking undue advantage of illiteracy of I Party, the procedure of the enquiry have been conducted in English and thus the enquiry is vitiated and the Principle of Natural Justice has not been followed and the report of the Enquiry Officer is illegal and lacks acceptable legal evidence on record. On the perusal of material records it is seen that there is no substantial and significant force in the said submissions of the I Party.

7. Further, The Hon'ble Apex Court, in the judgment reported in 2008 AIR SCW 3460, in the matter of MAVJIA C LAKUM Vs CENTRAL BANK OF INDIA, has clearly observed as follows:- “ After all the Tribunal has to judge on the basis of the proved misbehaviour. In this case we have already recorded that the Tribunal was firstly correct in holding that the misbehaviour was not wholly proved and whatever misconduct was proved, did not deserve the extreme punishment of discharge. The learned judge seems to be of the opinion that if the enquiry is held to be fair and proper, then the Industrial Tribunal cannot go into the question of evidence or the quantum of punishment. We are afraid that is not the correct law. Even if the enquiry is found to be fair, that would be only a finding certifying that all possible opportunities were given to the delinquent and the principles of natural justice and fair play were observed that does not mean that the findings arrived at were essentially the correct findings. If the Industrial Tribunal comes to the conclusion that the punishment given is shockingly disproportionate, the Industrial Tribunal would still be justified in re-appreciating the evidence and/or interfering with the quantum of punishment. There can be no dispute that power under section 11-A has to be exercised judiciously and the interference is possible only when the tribunal is not satisfied with the findings and further concludes that punishment imposed by the Management is highly disproportionate to the degree of guilt of the workman concerned.....The Tribunal was justified in appreciating the fact that the charges were not only trivial and were not so serious as to entail the extreme punishment.....Though the learned judge had discussed all the principles regarding the exercise of power under Section 11-A of the Industrial Disputes Act as also the doctrine of proportionality and the Wednesbury's principles, we are afraid the learned judge has not applied all these principles properly to the present case.” In the above case, the Hon'ble Apex Court has considered the scope of enquiry of the Industrial Tribunal and the finding of the learned Single judge of the Hon'ble High Court as regards the power of the Industrial tribunal in the case of enquiry held as fair and proper and the Industrial tribunal cannot go into the question of the evidence or the quantum of punishment. The Hon'ble Apex Court has held that the said law is not a correct law. Even in case the enquiry is held fair and proper, the Tribunal has to find out as to whether the findings arrived at by the Enquiry Officer are correct findings and supported by evidence and also find out as to whether the punishment is shockingly disproportionate. Accordingly in the present case also, appropriate award has to be passed, based on the above mentioned facts and circumstances.

8. Further, I Party has clearly pointed out in the claim statement and also in the evidence that he has been victimized as he belongs to lower cadre of staff and in fact the alleged Rs. 40,000/- also has not been recovered from I Party and the same has been recovered from the officials of the bank. Hence, it is seen that II Party/Management is adopting Super technical and hyper technical measures, so as to stop, the I Party/workman from getting legal benefits, as per the provisions of the Industrial Disputes Act. Further, the I Party/Workman has specifically stated in the claim statement and evidence that, statements have been obtained forcibly by the II Party from the I Party, under threat and coercion. Further, in the judgment reported in AIR 2004 Supreme Court 4271 in C.A No. 9610/2003, dated 12.08.2004, (Before Mr. Justice S.N. Variava and Mr. Justice Arijit Pasayat), in the case of Delhi Transport Corporation Vs Shyam Lal, it is held as follows:- “Effect of admission of guilt should be considered in proper perspective.” Also, in the judgment reported in 2009 (5) Kar.L.J. 634, in the High Court of Karnataka, dated 25.09.2008, (Before Mr. Justice P.D. Dinakaran, Mr. Justice C.J and Mr. Justice Mohan Shantanagoudar), in the case of Hindustan Petroleum Corporation Ltd., Mumbai Vs V.N. Srinivasa Reddy and others, it is held as follows:- “In the light of the fact that the very letters given by the workmen are now sought to be denied on the ground that they were obtained by the management by playing fraud and by coercion, these cannot be made the basis for retrenchment of the workmen and if the management wanted to proceed against them for the alleged misconduct, the only course open to them was to follow the procedure laid down in the Industrial Disputes Act, 1947, establish the misconduct and then proceed to impose punishment. We are supported by the decision of the Apex Court in the case of Gayatri Devi and Others Vs Shashi Pal wherein it is held that as a general proposition, the proposition that fraud unravels everything is right, but fraud must necessarily be pleaded and proved.” Again, in the judgment reported in 2005 (2) Kar.L.J. 47, in the High Court of Karnataka, dated 04.01.2005, (Before Mr. Justice H.L. Dattu), in the case of D. Muralidhar Vs Central Bank of India, Hyderabad, it is held as follows:- “In departmental enquiries although rules of evidence and

procedure by Civil Court not strictly applicable, in cases involving serious charges with consequences as grave as dismissal, standard of fairness and reasonable by Civil Court will apply to meet ends of justice." In the present case also, it is seen that the II Party has not proved the alleged misconduct committed by the I Party, as per the Principles of Preponderance of Probability, for the above mentioned reasons.

9. Further, the intention of the legislature in enacting the social welfare provisions of Industrial Disputes Act would be defeated, if the untenable submissions of the II Party/Management are taken into consideration. Further, the learned counsel appearing for I Party has relied upon the judgment reported in ILR 2011 KAR 1805 (Before Mr. Justice A N Venugopala Gowda), W.P. No. 18586/2002, dated 30.12.2010, in the case of R. Bali Reddy Vs Syndicate Bank, wherein, it is clearly held as follows:- "The Disciplinary Authority and the Appellate Authority were exercising quasi-judicial powers in the matter of passing the order imposing the punishment. The duty to act judicially was therefore, implicit in the very nature of the proceedings conducted by them. A due discharge of that duty required both the Disciplinary Authority and the Appellate Authority to record reasons. The authors of MEX-45 & MEX-46 i.e., D. Subbaramaiah and Smt. Poluri Nagamma were not examined. The said documents were only produced. Mere production and marking of documents does not amount to its proof, as held in the cases of AIR 1969 SC 983 between Central Bank of India Vs Prakash Chand Jain and in 2006(4) SCC 713 between Narinder Mohan Arya Vs United India Insurance Co. Limited. To rely upon the said documents, the said persons ought to have been examined and opportunity of cross-examination provided to the petitioner." In the present case also, the MW-1 namely, the Enquiry Officer has specifically admitted that the handwriting report is marked as P-15 and handwriting expert has not been examined and even the Sh. S. Pradeep is not examined and he has not explained the enquiry details recorded in English to the I Party in the Kannada language known to the I Party and Smt. Shivananjamma has not named the I Party in her complaint.

10. Further, the I Party has clearly pointed out in his evidence that, it is not true to suggest that all fair and proper opportunities have been provided to him to defend himself in enquiry and that all the allegation made by him in the affidavit are correct. Further, in the affidavit the I Party has clearly stated he is not well-versed in the proceedings of the enquiry, and the officials of the II Party have paid entire amount of Rs. 40,000/-, and the I Party has not paid any amount. Therefore, the misconduct alleged against the I Party is not correct and also, untenable. Further, the I Party has particularly pointed out in the affidavit that Sh. S. Pradeep is the star witness and report of the enquiry officer is based on the confession letter of one Sh. S. Pradeep marked as PW-13 and non-examination of Sh. S. Pradeep is illegal and accordingly Departmental Enquiry held against the I Party is not proper and there is no compliance of the Principles of Natural Justice and the I Party/Workman has not at all played any role in the matter. Further, as per the principles pointed out in the above mentioned judgment filed on behalf of I Party it is found that, there is serious force in the said submission of the I Party. For the above mentioned various reasons, it is seen that, the Enquiry Officer has not considered the material records in the proper perspective and there is perversity in the findings.

11. Further, in the present case, for the above mentioned facts and circumstances, it is seen that II Party has not established the alleged misconduct committed by the I Party as per the principles of preponderance of probability. In the judgement delivered in the case of Kendriya Vidyalaya Sangathan Vs J.Hussain 2013 SCC vol 10 page 106 @ paras 7&8, it is clearly observed as follows:- "A host of factors go into the decision making while exercising such a discretion which include, apart from the nature and gravity of misconduct, past conduct, nature of duties assigned to the delinquent, responsibility of duties assigned to the delinquent, previous penalty, if any, and the discipline required to be maintained in the department or establishment where he works, as well as extenuating circumstances, if any exists." Also, in the case of Indian Railway Construction Company limited Vs Ajay Kumar reported in 2003 (4) SCC page 579, it is observed as follows:- "It will also be pertinent to mention that victimisation can be said to have occurred only when the charge against the employee is false." In the present case also, it is seen that the charge as against the I Party has not been established by the II Party, in accordance with law and II Party has not strictly followed the law and there is violation, as such. On a careful perusal of entire materials on record, it is seen that II Party has not proved the alleged misconduct committed by the I Party, as per the principles of preponderance of probability and in the judgement delivered in the case of Delhi Transport Corpn. Vs D.T.C. Mazdoor Congress and Ors. (1991) Suppl. 1 SCC 600, it is clearly observed as follows:- "It is well settled in law that right to life enshrined under ART.21 of the Constitution would include right to livelihood. The order of illegal termination of the service of the I Party visits with civil consequence of jeopardizing not only livelihood but also puts an end to the career."

12. In the judgment delivered in WP No. 17316 of 2005(LK), by the Hon'ble Mr. Justice N. Kumar, dated 08.08.2005 in the case of The Divisional Controller Vs Sh. N. Ramachandra, it is held as follows: "As the discretion exercised by the Labour Court cannot be said to be perverse or arbitrary and when the said discretion has been exercised in a judicious manner after taking into consideration the facts of the case and the law governing the same, I do not find any infirmity in the award to interfere with the said discretion exercised by the Labour Court." In the present case also, it is seen that this Court has to exercise the said discretion, as there is perversity in the finding of the Enquiry officer, for the above mentioned reasons. Further, it is seen that, in the judgment relied upon behalf of

II Party reported in ILR 2008 KAR 5139, between Syndicate Bank Vs M Hanumanthappa, it is held as follows:- “When charges proved are grave interference with punishment of dismissal cannot be justified.” And also, in the judgment reported 2003(6) SCC 187 (AIR 2006 SC2730) between NEKRTC Vs H Amresh, it is held as follows:- “When an employee is found guilty of pilferage or of misappropriating the corporation’s funds, there is nothing wrong in the corporation losing confidence or faith in such an employee and awarding punishment of dismissal.” However, the said judgments relied upon on behalf of II Party are not applicable to the present case as there is perversity in the findings of the Enquiry Officer, and an act of unfair labour practice and also it is an act of victimization, and malafide action, taken by the II Party as against the I Party.

13. Further, the awarding of reinstatement does not amount to automatic conferment of back wages as held in 2009 (4) LLJ 667 (SC) Malla C.N. Vs State of Jammu and Kashmir & others. Further, it is held by the Hon’ble Supreme Court, in the case of APSRTC Vs B.S. David Pal, reported in 2006 (2) SCC 282, that the entitlement of back wages is not automatic on reinstatement. Awarding of back wages, depend upon other factors and circumstances. The I Party has clearly stated in the claim statement as well as in the evidence that the I Party is not working anywhere and his wife is not doing any job and his daughter Shalini is a physically handicapped girl and he has no other avocation in life, and he is not gainfully employed despite the best efforts he is not employed. The said submission of I Party is not disproved by II Party in proper manner. In the affidavit also, the I Party has stated that with no financial income the I Party is facing great hardship. However, the claim of the workman that, the I Party is entitled for the full back wages, cannot be considered, having regard to fact that the I Party has not performed any work for II Party from 17.06.2008 to till date for more than 9 years, and also, in order to balance the interest of both the parties, by adopting the balancing test or balancing process in the proper manner, this Court is of the considered opinion that in the facts and situation of the present case, 50% back wages only can be granted to the I Party.

14. Further, in the judgment reported in 2010-I-LLJ-861(SC), in C.A. No. 2874/2009, dated 28.04.2009, (Before Mr. Justice Tarun Chatterjee and Mr. Justice H.L. Dattu), in the case of Malwa Vanaspati & Chemical Co. Ltd. Vs Rajendra, it is held as follows:- “Back Wages – Entitlement for full back wages – Depends upon facts and circumstances of each case – Employee reinstated in service – Question of termination or reinstatement not in dispute – Employee only entitled to 50% back wages.” Also, in the judgment reported in AIR 2009 Supreme Court 240, in C.A. No. 5425/2008, dated 02.09.2008, (Before Mr. Justice Tarun Chatterjee and Mr. Justice Aftab Alam), in the case of M.P. Electricity Board & Ors Vs Maiku Prasad, it is held as follows:- “Industrial Dispute Act (14/1947), Sch. 2, Item 6 – Back wages – Curtailment – Respondents’ service terminated for unauthorised absence – Termination set aside by Labour Court – Direction for reinstatement and payment of full back wages passed – Considering long period between termination and reinstatement for which respondent has not worked – Back wages reduced to 50%.” Further, in the judgment reported in 2010-I-LLJ-861(SC), in C.A. No. 2874/2009, dated 28.04.2009, (Before Mr. Justice Tarun Chatterjee and Mr. Justice H.L. Dattu), in the case of Malwa Vanaspati & Chemical Co. Ltd. Vs Rajendra, it is held as follows:- “Back Wages – Not to be granted mechanically, upon termination of service being held illegal- Service of workman terminated in 1987 – Labour Court gave its award in 2002 holding termination illegal – In circumstances of case, 50% back wages held proper and payment thereof accordingly directed.” In the present case also, it is found that, the I Party is entitled to get 50% of the back wages, for the above mentioned reasons.

15. Further, in the judgment reported in 2009-I-LLJ 1 [SC], between Senior Regional Manager, TASMAC Ltd., and another Vs The M. Raviselvam, it is held as follows:- “Back wages-payment of back wages questioned- On reinstatement, full back wages is not to be paid automatically. It depends upon facts of each case. In the present case order for payment of back wages modified to the extent of 50% to be paid by the Management.” Further, the II Party is not justified in terminating the services of I Party without following the principles of natural justice, fairness and reasonableness. Further, on the totality of the above mentioned facts and circumstances, and also, after taking into consideration the material evidences and exhibits, in the proper perspective, it is found that, the II Party is not justified in imposing the punishment of removal of services of I Party and the II Party has to be directed to reinstate the I Party with benefits of continuity of service and other consequential benefits, that he would have received in the absence of the impugned penalty of removal from service of I Party, but with 50% back wages, in the best interest of justice, equity and fair play. Thus, the points are answered accordingly. Hence, the following award is passed.

AWARD

The II Party is not justified in imposing the punishment of removal from the services of I Party/ Sh. Mahadevaswamy w.e.f. 17.06.2008, and the said II Party is directed to reinstate I Party with the benefit of continuity of service and other consequential benefits, that he would have received in the absence of the impugned penalty of removal from the service of I party, but with 50% back wages, and the present reference is answered accordingly, without costs, for the above mentioned peculiar facts and special circumstances of the present matter.

(Dictated, transcribed, corrected and signed by me on 21st July, 2017)

V. S. RAVI, Presiding Officer

List of Witness on the side of I Party (victimization):

WW1	Sh. Mahadevaswamy, I Party
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नई दिल्ली, 11 अगस्त, 2017

का.आ. 1927.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार येस बैंक लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बंगलोर के पंचाट (संदर्भ संख्या 10/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.08.2017 को प्राप्त हुआ था।

[सं. एल-12012/60/2016-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 11th August, 2017

S.O. 1927.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 10/2017) of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore as shown in the Annexure, in the industrial dispute between the management of Yes Bank Limited and their workmen, received by the Central Government on 11.08.2017.

[No. L-12012/60/2016-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 28th JULY, 2017

PRESENT : Shri V. S. RAVI, Presiding Officer

C.R. No. 10/2017

I Party

Sh. Praveen D'souza,
2-126/8, Kuttar Padav,
Panipura Subash Nagar,
Munnu Post,
Mangalore – 575017

II Party

1. The Director, M/s. Stalwart Security Services India Limited, 41/1, Neer Maniyakarar Street, Krishnaswamy Nagar, Ramanathapuram, Coimbatore - 6411045
2. The Branch Head, Yes Bank Limited, Ideal Towers, G. H. S. Road, Mangalore - 575001

AWARD

1. The Central Government vide Order No.L-12012/60/2016-IR(B-I) dated 11.05.2017 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

SCHEDULE

“Whether the termination of services of Sh. Praveen D'souza, S/o Sh. Joseph D'Souza, w.e.f. 21.05.2016, by the management of M/s. Stalwart Security Services India Ltd., Contractor of Yes Bank Ltd, is legal and justified? If not, to what relief the workman is entitled and what directions are necessary in that respect?”

2. After the receipt of the reference, the matter has been registered on the file of this Tribunal and notices have been sent for both parties. None appeared for the I party and I party also called absent. In fact, notice of hearings have been sent to the I party by RPAD through the Department of Posts, India and Still, no representation has been made on behalf of I party and also, I party is called, absent.

3. On perusal of records already notices have been sent and, the said notices have been served to both the parties. Hence, it is found that in spite of giving sufficient and adequate chances by issuing notices of hearing to I party, the I party has not made any appearance. In such circumstances, the matter is posted for passing Award, after the perusal of entire records brought on record.

4. Further, from the above mentioned circumstances, it would be very much clear, in the present matter, that the I party has no interest to contest the present matter, inspite of the service of notices of hearing to the I party. It is for the I party to make out a case that I party is entitled to the above mentioned benefits and that the management has done a mistake by denying the said benefits. On the other hand, Mr. Praveen Kumar Dhama, representative II party Sl. No. 1 present with joint affidavit, settlement letter and receipt of payment. However, I Party has neither appeared before this Court nor filed claim statement or objection for the records, filed on behalf of II party Sl. No. 1. Further, it is reported on behalf of II party that, II party has not violated any provisions of the Rules and also, already granted all the legitimate benefits to the I party and also, as per the provisions of law, the relevant benefits have been granted by the II Party. Under the above mentioned special circumstances and peculiar facts, this Tribunal is constrained to pass appropriate award, after the perusal of materials available on record.

5. Since no appearance has been made and also claim statement has not been filed and further no case has been made out by I party and the present reference has only to be rejected for non-prosecution. Therefore, keeping in view the conduct of I party in, not appearing before this Tribunal, even though notices have been sent to the I party by way of RPAD and the conduct of I Party in not filing claim statement, in support of the said reference, it is crystal clear that the I party is no more interested in prosecuting the claim against II party. In the result and also in above mentioned facts and situations, it is to be held that the present reference has to be rejected, for non prosecution and no useful purpose will be served in keeping the proceedings any more pending. Hence the following award.

AWARD

Reference is Rejected for non-prosecution, by the I party, though sufficient and adequate opportunities have been granted to the I party.

(Dictated, transcribed, corrected and signed by me on 28th July, 2017)

V. S. RAVI, Presiding Officer

नई दिल्ली, 11 अगस्त, 2017

का.आ. 1928.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ सं. 135/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.07.2017 को प्राप्त हुआ था।

[सं. एल-22012/53/2005-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 11th August, 2017

S.O. 1928.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 135/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the management of M/s. ECL and their workmen, received by the Central Government on 26.07.2017.

[No. L-22012/53/2005-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT : Sri Pramod Kumar Mishra, Presiding Officer

REFERENCE NO. 135 OF 2005

PARTIES :

The management of Dhemomain Colliery of M/s. E.C.L.

v/s

Shri Kartick Maji

REPRESENTATIVES :

For the Management : Shri P. K. Goswami, Learned Advocate
 For the Union (Workman) : Shri Kuldip Mahato, Learned Union Representative
 Industry : Coal

State : West Bengal

Dated : 12.07.2017

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour vide its letter **NO. L-22012/53/2005-IR(CM-II)** dated 05.12.2005 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“Whether the demand of the Koyala Mazdoor Congress from the management of Narsamuda Colliery under Sodepur Area of M/s. ECL for regularizing Shri Kartick Maji as Mining Sirdar from the date of his actual deployment in the post with all consequential benefits is justified? If so, to what relief is the workman entitled?”

1. Having received the Order **NO. L-22012/53/2005-IR(CM-II)** dated 05.12.2005 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference Case No. **135 of 2005** was registered on 23.12.2005. Accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned, directing them to appear in the court, on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned. Both the parties appeared in the Tribunal, through their representative.

2. The workman Shri Kartick Maji has filed written statement through union representative. He has alleged in his written statement that he was employed on compassionate ground an Apprentice under appt Act, 1961. He was initially posted at Dhemomain Colliery of M/s. Eastern Coalfields Limited on 05.11.1990. His duration of Apprenticeship was for 3 (Three) years only. During Apprenticeship Shri Kartick Maji also passed the examination of Gas Testing (11.03.1993) and Mining Sirdership examination on 06.05.1994. He also completed his Apprenticeship training (05.11.1990 - 31.03.1994) on April, 1994. He received a National Apprenticeship Certificate. The management of Sodepur Area of M/s. Eastern Coalfields Limited allowed Shri Kartick Maji to work as Mining Sirdar with condition that he will be on trial for one month and will be reviewed. The management regularizes Shri Kartick Maji as Mining Sirdar on and from 03.01.1996, though he should have been regularized from April / May, 1994. On account of such delay the workman has been deprived of his legal rights. The workman has prayed that management of Dhemomain Colliery of M/s. Eastern Coalfields Limited be directed to regularize workman w.e.f. April / May, 1994.

3. The Agent of Dhemomain Colliery of M/s. Eastern Coalfields Limited has alleged in his written statement that the concerned workman joined as apprentice in the year 1990. After completion of Apprentice he was regularized as Mazdoor Category- I. In the meantime the concerned workman obtained a Sirdarship certificate on 26.08.1994 from the competent authority. Soon after obtaining certificate Shri Kartick Maji claim for regularization for the post of Mining Sirdar. Though at that time Mining Sirdar was Surplus and there was no vacancy. For the time being Shri Kartick Maji was allowed on trial basis to perform the job of Mining Sirdar and subsequently he was regularized as Mining Sirdar from 03.09.1996 in T&S Grade- C as per Ref. DMA/C-6/A/38/96/1415 06.11.1996. Without having declared permanent vacancies there is no rule to regularize a workman. Regularization in absence of vacancy is not a right of a workman. The workman is not entitled to any relief.

4. The workman has filed following documentary evidences :-

(i) Photocopy of the Mining Sirdar's Certificate, (ii) Photocopy of the Gas Testing Certificate, (iii) Photocopy of the First Aid Certificate, (iv) Photocopy of the National Apprenticeship Certificate, (v) Photocopy of the Application Submitted to the G. M. dated 25.05.1994, (vi) Photocopy of the Authorization Letter issued by Supdt.(M) / Manger of Dhemomain Colliery, (vii) Photocopy of the Office Order dated 06.01.2004 issued by the Personnel Manager of Dhemomain Group, (viii) Photocopy of the Appointment Letter, (ix) Photocopy of the Release Order dated 14.04.1995

The workman Shri Kartick Chandra Maji has filed affidavit on his oral evidence and he has been cross-examined by the learned advocate of the Dhemomain Colliery of M/s. Eastern Coalfields Limited.

The workman, Shri Kartick Chandra Maji has also filed written argument.

The management of Dhemomain Colliery of M/s. Eastern Coalfields Limited has not filed any documentary or oral evidence.

5. I have heard the arguments of Shri Kuldip Mahato, learned union representative on behalf of Shri Kartick Chandra Maji, the workman and Shri P. K. Goswami, learned advocate on behalf of the management of Dhemomain Colliery of M/s. Eastern Coalfields Limited.

6. Shri Kuldip Mahato, learned union representative for the workman Shri Kartick Chandra Maji has argued that workman has been working since 1994, instead of regularizing the workman from 1994 he has been regularized as Mining Sirdar from 1996 which is illegal. On the other hand Shri P. K. Goswami, learned advocate for the management of Dhemomain Colliery of M/s. Eastern Coalfields Limited has argued that in the year 1994 there has no permanent vacancy, therefore he has not been regularized as Mining Sirdar.

7. It is admitted fact that the workman, Shri Kartick Chandra Maji has been in employment of Dhemomain Colliery of M/s. Eastern Coalfields Limited since 1990. During service period he acquired necessary qualification for Mining Sirdarship. He passed the Mining Sirdarship examination. It is also admitted fact that for the time being Shri Kartick Chandra Maji was permitted to perform the job of Mining Sirdar with the condition that he was on trial for 1 (One) month with condition to review. The question arises for consideration that whether the workman, Shri Kartick Chandra Maji was entitled for regularization from April, 1994 as claimed.

8. Functioning on any particular post is one thing and regularization on that post is another thing. The workman can only be regularized on permanent vacancy. The Agent of Dhemomain Colliery of M/s. Eastern Coalfields Limited alleged in Para- 6 & 7 of his written statement that there was no permanent vacancy of Mining Sirdar. Workman has not alleged that when permanent vacancy of Mining Sirdar fell vacant.

9. In **State of Karnataka and Others v/s M. L. Kesari and Others reported in 2010 (127) FLR page 12** the Hon'ble Supreme Court has held that :-

“ For regularization the person appointed should posses the minimum qualification and there must be sanctioned post.”

Though Shri Kartick Chandra Maji had necessary qualification but there was no permanent / sanctioned post. In absence of permanent / sanctioned post mere functioning as mining Sirdar will not entitle Shri Kartick Chandra Maji to be regularized since 1994.

10. In view of above discussion the demand of Koyal Mazdoor Congress on behalf of the workman Shri Kartick Majhi form the management of Dhemomain Colliery of M/s. Eastern Coalfields Limited to regularize Shri Kartick Majhi as Mining Sirdar from the date of his actual deployment on the post with all consequential benefits is illegal and unjustified. The workman, Shri Kartick Majhi is not entitled for any benefit

ORDER

Let an “Award” be and the same is passed as per above discussion. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 11 अगस्त, 2017

का.आ. 1929.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ सं. 26/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 26.07.2017 को प्राप्त हुआ था।

[सं. एल-22012/147/2004-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 11th August, 2017

S.O. 1929.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 26/2005) of the Central Government Industrial Tribunal-cum-

Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the management of M/s. ECL and their workmen, received by the Central Government on 26.07.2017.

[No. L-22012/147/2004-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT : Sri Pramod Kumar Mishra, Presiding Officer

REFERENCE NO. 26 OF 2005

PARTIES :

The management of Bhanora Colliery of M/s. E.C.L.

v/s

Shri Tulu Majhi

REPRESENTATIVES :

For the Management : Shri P. K. Das, Learned Advocate

For the Union (Workman) : Shri Rakesh Kumar, Learned Union Representative

Industry : Coal

State : West Bengal

Dated : 05.07.2017

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour vide its letter **No. L-22012/147/2004-IR(CM-II)** dated 07.03.2005 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“Whether the action of the management of Bhanora Colliery under Sripur Area of M/s. ECL in dismissing Sh. Tulu Majhi, U. G. Loader w.e.f. 21/26.05.1997 is justified? If not, what relief the workman is entitled to and from which date?”

1. Having received the Order **No. L-22012/147/2004-IR(CM-II)** dated 07.03.2005 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference Case No. **26 of 2005** was registered on 12.04.2005. Accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned, directing them to appear in the court, on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned. Both the parties appeared in the Tribunal, through their representative.

2. The workman Shri Tulu Majhi has filed written statement through the Union Representative. The workman has alleged in his written statement that he was a permanent workman designated as Underground Loader posted at Bhanora Colliery under Sripur Area of M/s. Eastern Coalfields Limited. Shri Tulu Majhi was chargesheeted by the management on 16.11.1996 for his absence with effect from 31.07.1996. The workman replied to the management of Bhanora Colliery under Sripur Area of M/s. Eastern Coalfields Limited but the management decided to hold enquiry. Shri Tulu Majhi participated in the enquiry. He submitted before the management that he was absent as his son was seriously ill and after sometimes his son was died. Due to this reason he and his wife were mentally disturbed, therefore he could not attend the duty. His period of absence was only 3 (Three) months and 16 (Sixteen) days and that is too, due to illness and then sudden death of his son. But the management awarded harsh and extreme punishment and passed dismissal order vide Letter No. GM/SA/C-6/9/97/1819 dated 21/26.05.1997. Shri Tulu Majhi belonged to Schedule Cast / Schedule Tribe community which is weaker section of the society. The management of M/s. Eastern Coalfields Limited allowed number of workmen who absented even more than a year, but in this issue the management did not consider the request of the concerned workman. Shri Tulu Majhi does not have any source of income to maintain his livelihood. He is at the stage of starvation. Shri Tulu Majhi has challenged the findings of the Enquiry Officer. He has alleged that the Enquiry Officer did not consider his reason of absence.

3. After service of notice the management of Bhanora Colliery under Sripur Area of M/s. Eastern Coalfields Limited did not file written statement for 9 (Nine) years. Ultimately this Tribunal was compelled to close the opportunity of filing written statement by Bhanora Colliery under Sripur Area of M/s. Eastern Coalfields Limited. The Tribunal passed order on 10.10.2012 and closed the opportunity of filing written statement by Bhanora Colliery under Sripur Area of M/s. Eastern Coalfields Limited.

4. The workman has filed the following documents :-

(i) Photocopy of the Chargesheet, (ii) Photocopy of the Enquiry Proceeding, (iii) Photocopy of The Enquiry Report (iv) Photocopy of the Dismissal Order, (v) Photocopy of the Bipartite settlement dated 22.05.2007 between Union and Management, (vi) Photocopy of the Bipartite settlement dated 23.05.2007 between Union and Management, (vii) Photocopy of his application addressed to General Manager to allow him to join duty in the light of Bipartite settlement dated 22.05.2007 and 23.05.2007.

The workman Shri Tulu Majhi has filed affidavit in his oral evidence and he has been cross-examined by the learned advocate of Bhanora Colliery under Sripur Area of M/s. Eastern Coalfields Limited.

Bhanora Colliery under Sripur Area of M/s. Eastern Coalfields Limited has not filed documentary or oral evidence.

5. I have heard the arguments of Shri Rakesh Kumar, the learned Union representative appeared on behalf of Shri Tulu Majhi, the workman and Shri P. K. Das, the learned advocate appeared on behalf of Bhanora Colliery under Sripur Area of M/s. Eastern Coalfields Limited.

6. Shri Rakesh Kumar, the learned Union representative appeared on behalf of Shri Tulu Majhi has argued that the son of delinquent workman Shri Tulu Majhi was seriously ill and ultimately he died. Therefore, in this compelling circumstances the workman Shri Tulu Majhi had to remain absent which was quite unintentional and under compelling circumstances. The absence of Shri Tulu Majhi was only for 3 (Three) months and 16 (Sixteen) days. His previous attendance record is quite good and he never has been previous absentee. He belongs to Schedule Cast community and he was even not issued 2nd Show Cause Notice. The enquiry has been conducted in violation of the principles of natural justice. On the other hand, Shri P.K. Das, the learned advocate appeared on behalf of Bhanora Colliery under Sripur Area of M/s. Eastern Coalfields Limited has argued that the delinquent workman was unauthorized absent from duty which is one of the misconduct described in Certified Standing Order of M/s. Eastern Coalfields Limited. After departmental enquiry Shri Tulu Majhi was dismissed from service and the Dismissal Order is justified.

7. It is admitted fact that Shri Tulu Majhi had been a permanent workman as Underground Loader posted at Bhanora Colliery under Sripur Area of M/s. Eastern Coalfields Limited. It is also admitted fact that he was absent from duty with effect from 31.07.1996 for a period of 3 (Three) months & 16 (Sixteen) days. The delinquent workman has been dismissed from service after departmental enquiry. The workman has challenged the validity and fairness of the departmental enquiry, which has been denied by M/s. Eastern Coalfields Limited.

8. The workman has filed copy of Chargesheet dated 31.03.1997 issued to him. On perusal of Chargesheet it is apparent that the Enquiry Officer has not mentioned anything regarding documentary or oral evidence in the Chargesheet. Of course unauthorized absence for more than ten days without prior permission or intimation is one of the misconduct mentioned in the Certified Standing Order. For such misconduct the delinquent workman can be departmentally enquired into. He can be chargesheeted. But it is mandatory for the Enquiry Officer while issuing Chargesheet to delinquent workman not only to mention the charges levelled against him, but also the documents and witnesses on which department propose to rely. It is well settled that a person who is required to answer a charge imposed, should not only know the accusation but also the particulars by which the accusation is supported. The delinquent must be given fair chance to reply the charges levelled against him. The Chargesheet is the very basis of enquiry proceeding. The Chargesheet should not be vague. If the Chargesheet does not contain the particulars of charges to the workman, the enquiry will not be in conformity with the rules of natural justice. It is the duty of employer not only to indicate the precise nature of the charge but also the documents upon which the charges are based. If copy of documents are not supplied to delinquent workman, then the delinquent workman cannot defend himself.

9. The Hon'ble Apex Court in **Union of India and Others v/s S. K. Kapoor (2011)4 S.C.C. page 589** has held that :

“It is a settled principle of natural justice that if any material is to be relied upon in departmental proceedings, a copy of the same must be supplied in advance to the charge sheeted employee so that he may have a chance to rebut the same.”

10. On perusal of the Enquiry Report it is apparent that all the enquiry proceeding has been conducted in one day i.e. on 03.05.1997. The examination-in-chief of management witness Shri P. P. Mukherjee, Shri Subal Bhadra and Shri Mukhram Harijan have been recorded on 03.05.1997. Though the workman was present in the proceeding and the

finger impression of Shri Tulu Majhi is present on enquiry proceeding, but he was not afforded opportunity of cross-examination by the Enquiry Officer. If the Enquiry Officer has recorded the examination-in-chief of management witnesses, he was duty bound to provide opportunity of cross-examination to delinquent workman. The statement of all the three witnesses have been recorded in one day i.e. on 03.05.1997, but the workman was denied opportunity of cross-examination, which is clear violation of principles of natural justice. The natural justice requires that enquiry should be held impartially, objectively and by giving opportunity of cross-examination to delinquent workman. Fair opportunity and fair trial are elements of principles of natural justice which are always applied in departmental proceedings.

11. The Hon'ble Apex Court in **Ayyaubaikhan Noorkhan Pathan v/s State of Maharashtra & Others, reported in AIR 2013 SC 58** has held that :

“cross-examination is an integral part of the principles of natural justice, where the delinquent had no opportunity to cross-examine the witness, the same cannot be relied upon.”

12. After recording the examination-in-chief and cross-examination of the management witness the Enquiry Officer ought to have fixed a date for defence evidence of the workman. No one can be condemned unheard. The delinquent workman had right in law to submit his defence evidence, documentary or oral. But the Enquiry Officer did not afford the opportunity to delinquent workman, Shri Tulu Majhi to file documentary evidence or examine any witness in his support.

13. The Hon'ble Apex Court in the **State of Uttar Pradesh and Another v/s Sri C. S. Sharma, AIR 1968 page 158** has held that :

“omission to give opportunity to the Officer to produce his witness and lead evidence in his defence vitiates the proceeding. Opportunity has to be given to the delinquent to cross-examine the witness and to lead evidence in his defence.”

14. On perusal of materials available on record it is manifestly clear that 2nd Show-Cause Notice has not been issued to delinquent workman before passing order of dismissal which is mandatory in law. After conclusion of departmental enquiry the disciplinary authority must issue 2nd Show-Cause Notice along with copies of statement of witness, enquiry proceeding and findings of the Enquiry Officer and call for explanation of the delinquent workman before passing the Dismissal Order. In view of law propounded Hon'ble Apex Court in **Union of India & Others v/s Mohd. Ramzan Khan, 1990 (61) FLR 376**, 2nd Show-Cause Notice to the proposed punishment before passing the order of termination is mandatory.

15. On perusal of materials available on record it is manifestly clear that the Enquiry Officer has conducted the enquiry proceeding in violation of principles of natural justice, denying the right of cross-examination and opportunity to lead defence evidence to delinquent. Even the Disciplinary / Punishing authority has passed the Dismissal Order without following due process of law. Several factors are required to be considered before passing order of dismissal such as previous conduct, the nature of gravity of misconduct and past record of concerned workman. As per Bipartite Settlement between the Management and Union dated 22.05.2007 & 23.05.2007 the workman who is below 45 (Forty Five) years of age, if their period of absence is up to 9 (Nine) months, the management may reinstate them.

16. The workman has alleged in Para-11 of written statement that he does not have any source of income to maintain his livelihood. He is at the stage of starvation. The workman has also stated in his affidavit in Para-7 that he does not have any source of income for his livelihood. He has been cross-examined by the learned advocate of Bhanora Colliery under Sripur Area of M/s. Eastern Coalfields Limited and he has not stated otherwise in his cross-examination. There is no reason to disbelieve his evidence. He belongs to Schedule Cast community. His period of absences from duty was due to illness and ultimate death of his son which was under compelling circumstances. Therefore the order of dismissal should be set-a-side. Keeping in view of his length of service there is no possibility of getting alternate employment anywhere. He is entitled to reinstatement with full back wages.

17. The Hon'ble Apex Court in **Hindustan Tin Works Pvt. Ltd. v/s Employees of Hindustan Tin Works Private Limited (1979) 2 SCC 80** has held that :

“The relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the employer is found to be in the wrong as a result of which the workman is directed to be reinstated, the employer could not shirk his responsibility of paying the wages which the workman has been deprived of by the illegal or invalid action of the employer. Speaking realistically, where termination of service is questioned as invalid or illegal and the workman has to go through the gamut of litigation, his capacity to sustain himself throughout the

protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted. More so in our system where the law's proverbial delay has become stupefying. If after such a protracted time and energy consuming litigation during which period the workman just sustains himself, ultimately he is to be told that though he will be reinstated, he will be denied the back wages which would be due to him, the workman would be subjected to a sort of penalty for no fault of his and it is wholly undeserved. Ordinarily, therefore, a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness. That is the normal rule. ”

18. The workman has been dismissed from service on 26.05.1997, but the Reference is of the year 2005. The workman has not explained this delay why he kept mum for so many years. For the delay of workman the Public Sector Undertaking should not suffer. Therefore full back wages should be awarded from the date of Notification of the Reference.

19. In view of the above discussion the action of management of Bhanora Colliery under Sripur Area of M/s. Eastern Coalfields Limited in dismissing Shri Tulu Majhi, Underground Loader with effect from 26.05.1997 is illegal and unjustified. The dismissal order of Shri Tulu Majhi dated 21/26.05.1997 is hereby set-a-side. The management of Bhanora Colliery under Sripur Area of M/s. Eastern Coalfields Limited is directed to reinstate Shri Tulu Majhi with all consequential benefits from the date of notification of reference i.e. from 07.03.2005. It is further directed that Shri Tulu Majhi will get full back wages from the date of Notification of Reference. The delinquent workman would be imposed stoppage of 2 (Two) annual increments without cumulative effect.

ORDER

Let an “Award” be and the same is passed as per above discussion. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 11 अगस्त, 2017

का.आ. 1930.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसारण में केन्द्रीय सरकार ईसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ सं. 132/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 26.07.2017 को प्राप्त हुआ था।

[सं. एल-22012/21/2005-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 11th August, 2017

S.O. 1930.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 132/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the management of M/s. ECL and their workmen, received by the Central Government on 26.07.2017.

[No. L-22012/21/2005-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

PRESENT : Sri Pramod Kumar Mishra, Presiding Officer

REFERENCE NO. 132 OF 2005

PARTIES :

The management of Methani Colliery of M/s. E.C.L.

v/s

Shri Shankar Das

REPRESENTATIVES :

For the Management : Shri P. K. Goswami, Learned Advocate

For the Union (Workman) : Shri S. K. Pandey, Learned Union Representative

Industry : Coal

State : West Bengal

Dated : 17.07.2017

AWARD

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), Govt. of India through the Ministry of Labour vide its letter **NO. L-22012/21/2005-IR(CM-II)** dated 28.11.2005 has been pleased to refer the following dispute for adjudication by this Tribunal.

SCHEDULE

“Whether the action of management of Methani Colliery of M/s. Eastern Coalfields Limited in dismissing Sh. Shankar Das, Driller from services w.e.f. 22.10.1997 is legal and justified? If not, to what relief the workman is entitled and from which date?”

1. Having received the Order **NO. L-22012/21/2005-IR(CM-II)** dated 28.11.2005 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference Case No. **132 of 2005** was registered on 23.12.2005. Accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned, directing them to appear in the court, on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned. Both the parties appeared in the Tribunal, through their representative.

2. The workman, Shri Shankar Das has filed written statement through his union representative, has alleged in his written statement that he was in employment of the Company as Driller at Methani Colliery of M/s. Eastern Coalfields Limited bearing Man No. 128564. He was absent from duty with effect from 08.03.1997 to 01.07.1997 due to his sickness which was beyond his control. Being declared fit when the workman reported the management with medical certificates about his sickness, he was not allowed to resume his duty. He was served with the Chargesheet vide Chargesheet No. Mth/C-6/97/5/120 dated 02.07.1997. The workman replied to the Chargesheet. The departmental enquiry was held against him. The workman appeared before the Enquiry Officer, but there was no valid enquiry at all. Only his signature was obtained in readymade enquiry report. The workman was dismissed from service of the company vide Dismissal order No. Meth/C-6/5/911 dated 22.10.1997 in arbitrary manner on the basis of invalid enquiry proceeding. The enquiry proceeding was conducted with intention to dismiss the workman. No 2nd Show-cause notice was issued to the workman before issuing Order of Dismissal. Since then the workman is sitting without job. The dismissal of workman Shri Shankar Das from the service of the company is illegal and unjustified. The workman has prayed that the management of Methani Colliery of M/s. Eastern Coalfields Limited be directed to reinstate the workman in service with payment of full back wages for the period from the date of dismissal with all consequential benefits.

3. The Agent of Methani Colliery of M/s. Eastern Coalfields Limited has alleged in his written statement that workman Shri Shankar Das was dismissed from service in the year 1997, but it is surprising to note that the concerned union took the matter with Assistant Labour Commissioner (Central) for the first time in the year 2004 after expiry of 7 years without showing any reasons for delay in agitating the dispute. Shri Shankar Das had been in the habit of absenting himself from duty without any information for which he was punished on earlier occasions. He again committed same offence of unauthorized absence for which he was chargesheeted and an enquiry was conducted according to rules. The concerned workman duly participated in the enquiry and availed all the opportunities to which he was entitled. The Enquiry Officer held him guilty and proved the charges levelled against him. The act of unauthorized absence is a serious act. The management after considering all aspects recommended for dismissal. Shri Shankar Das was present 38 days in the year 1994, 125 days in the year 1995 and 80 days in the year 1996.

4. The workman has filed the following documents :-

(i) Photocopy of the Chargesheet, (ii) Photocopy of the reply of the workman to the Chargesheet, (iii) Photocopy of Enquiry Proceeding, Photo Copy of the Enquiry Report, (iv) Photocopy of the Dismissal Order.

In oral evidence Shri Shankar Das has filed affidavit. He was cross-examined by the learned advocate of Methani Colliery of M/s. Eastern Coalfields Limited.

The Agent of Methani Colliery of M/s. Eastern Coalfields Limited has not filed documentary evidence or oral evidence nor examined any witness.

5. I have heard the arguments of Shri S. K. Pandey, learned union representative on behalf of Shri Shankar Das, the workman and Shri P. K. Goswami, learned advocate on behalf of the management of Methani Colliery of M/s. Eastern Coalfields Limited.

6. Shri S. K. Pandey, learned union representative for the workman has argued that all the enquiry have been conducted on printed pro forma with a predetermined mindset to terminate the workman from service. The enquiry is vitiated and biased. The workman was denied opportunity to defend himself. Shri Pandey has also argued that the Manager of Methani Colliery of M/s. Eastern Coalfields Limited has dismissed the workman, who has no authority to pass Dismissal Order. The C.M.D. has delegated power to G.M. The Manager of the colliery have no right in law to pass dismissal order. On the other hand, Shri P. K. Goswami, learned advocate for the management has argued that the workman was a habitual absentee. He has preferred the dispute very late. The workman is not entitled to any relief.

7. It is not disputed that Shri Shankar Das had been a Driller at Methani Colliery of M/s. Eastern Coalfields Limited Coalfields Limited. It is also not disputed that he was absent from duty from 08.03.1997. As per the workman his absence was due to his sickness. The workman has challenged the proceeding that he was denied opportunity to defend himself and the enquiry report is vitiated and biased. The Agent of Methani Colliery of M/s. Eastern Coalfields Limited has alleged that all the opportunities were made available to the delinquent workman during the enquiry proceeding.

8. The workman has filed copy of Chargesheet No. Mth/C-6/97/5/120 dated 02.07.1997 issued to him. The Manager of concerned colliery who issued the Chargesheet has mentioned in the Chargesheet “*your service will stand terminated w.e.f. the date of your unauthorized absence unless I receive a satisfactory explanation of absence and of your failure to inform of your absence within 48 hrs. of your receipt of this letter.*”

9. On perusal of Chargesheet It seems that Enquiry Officer has predetermined to pass order of termination before conducting the enquiry. The Enquiry Officer has conducted the enquiry in violation of principles of natural justice. As per Certified Standing Order three days time are minimum requirement to submit explanation for a chargesheeted employee. But it is surprising enough that the Enquiry Officer has not only declined minimum time for submission of explanation of delinquent but has also issued termination notice in the Chargesheet itself, which is absolutely contrary to law.

10. The Hon’ble Apex Court in **State of U. P. v/s Saroj Kumar Sinha, 2010 (124) FLR 857** has held that :

“by virtue of Article 311(2) of Constitution of India the departmental enquiry has to be conducted in accordance with the rules of natural justice. The Enquiry Officer is a quasi-judicial authority in position of an independent adjudicator, not representative of department.”

11. Even in the Chargesheet there is no recital that the workman has been issued copies of documents and names of witnesses on which the Enquiry Officer intends to rely which was mandatory. Though the Agent of Methani Colliery of M/s. Eastern Coalfields Limited has mentioned in his written statement that delinquent workman Shri Shankar Das had been previous absentee, but in Chargesheet he has not been charged for previous absence. If the workman has not been chargesheeted for his misconduct of his previous misconduct, no amount of evidence can be laid on those facts. If the delinquent workman Shri Shankar Das has not been chargesheeted for his previous absence, it will be deemed that he has not departmentally enquired into for his previous absence.

12. The delinquent workman has not been afforded opportunity to cross-examine the management witness. The Enquiry Officer has examined three witnesses, P.W.-I Shri Ashoke Banerjee, Bill Clerk; P.W.-II Shri Kanti Mukherjee, Leave Clerk; P.W.-III Shri M. M. Sadhukhan, M/R on 11.08.1997. All these three witnesses have been examined by the Enquiry Officer on 11.08.1997. But the delinquent workman, though he was present in enquiry proceeding was not afforded opportunity to cross-examine these witnesses. The statement of all these witnesses have been written on printed pro forma. On the printed pro forma, it has been already printed – ‘*cross-examination declined*’. Then how it can be concluded that delinquent workman was really afforded opportunity of cross-examination. If the workman does not prefer to cross-examine the witnesses, then cross-examination ought to have been deferred for next date and if on the adjourned date also the delinquent workman does not cross-examine, then further statement of management witness can be recorded. Even the management witness who deposed about unauthorized absence of the delinquent workman did not file copies of attendance record nor it was shown to delinquent workman. It was mandatory for the Enquiry Officer to ask the delinquent workman that he was authorized to take assistance from co-worker in the departmental proceeding. In **Union Of India And Others vs Naman Singh Sekhawat 2008(118) FLR page 1121** the Hon’ble Apex Court has held that :

“in the departmental proceeding the appellant was bound to comply with the principles of natural justice.”

Copies of some documents were not supplied to delinquent. The delinquent was entitled to the effective assistance from departmental representatives.

13. The rules of natural justice requires that when a fact is sought to be proved before a Tribunal, it must be supported by statements. All the evidence against the person concerned should be taken in his presence and he should be given an adequate opportunity to cross-examine the witness giving evidence against him. The basic requirement of a fair opportunity is that the enquiry must be conducted honestly and in a bona fide manner with a view to determine whether the charge framed against the delinquent employee is proved or not. For proving the charge against a chargesheeted employee, he must be afforded all reasonable opportunity to defend himself.

14. After recording the examination-in-chief of management witnesses, the statement of chargesheeted employee was recorded on the very first day of enquiry i.e. on 11.08.1997. The delinquent workman was not afforded to lead defence evidence in his support. After conclusion of recording of examination-in-chief, the enquiry report was submitted without fixing a date for delinquent workman to lead defence evidence. It was mandatory for the Enquiry Officer to fix a date for defence evidence of workman. The delinquent workman in his explanation to Chargesheet issued to him has mentioned that he had submitted medical certificate for perusal of the Manager of Methani Colliery of M/s. Eastern Coalfields Limited. Even these medical papers have not been considered by the Enquiry Officer. Even these medical papers have not been made part of enquiry proceeding nor it has been presented for perusal of Tribunal. Without considering the Medical papers of delinquent workman it is surprising how the Enquiry Officer concluded that the delinquent workman was guilty of unauthorized absence. It is surprising enough that the Enquiry Officer has submitted enquiry report in a printed pro forma. It indicates his pre-determined mindset to hold the delinquent workman guilty.

15. After conclusion of enquiry proceeding and after submission of enquiry report the Disciplinary Authority was required in law to issue 2nd Show-Cause Notice before passing Order of Dismissal. But it is strange enough that Manager of Methani Colliery of M/s. Eastern Coalfields Limited has not issued 2nd Show-Cause Notice before issuing Dismissal Order bearing No. Meth/C-6/5/911 dated 22.10.1997. In view of law propounded by the Hon'ble Apex Court in **Union of India & Others v/s Mohd. Ramzan Khan, 1990 (61) FLR 376**, 2nd Show Cause Notice to the proposed punishment before passing the order of termination is mandatory.

16. On perusal of materials available on record it is manifest that the Enquiry Officer conducted the enquiry proceeding without following the principles of natural justice. The Enquiry Officer has not afforded opportunity of cross-examination to management witness and opportunity of leading defence evidence to delinquent workman. The Dismissal Order has not been passed by the Competent Authority. Even the Manager of Methani Colliery of M/s. Eastern Coalfields Limited who passed the Order of Dismissal did not issue 2nd Show-Cause Notice before passing the Dismissal Order. Employer has to keep in mind that while disciplinary proceeding is going on against a chargesheeted employee it should not violate any of the sacred provisions of Constitution of India. Observance of principles of natural justice is mandatory in departmental proceeding. No one can be condemned unheard. Before passing Order of Dismissal the validity of departmental enquiry has to be considered by the disciplinary authority. The Order of Dismissal which is the major punishment cannot be passed without a valid, lawful, uninitiated and proper enquiry. Punishment of dismissal of any delinquent workman for mere absence of few months, without a valid and lawful enquiry is illegal and unjustified which ought to be set-a-side.

17. The workman has stated in Para-6 of his written statement that since then he is sitting without job. The fact of unemployment of workman has not been denied by Methani Colliery of M/s. Eastern Coalfields Limited. The workman, Shri Shankar Das has stated in para-6 of his oral evidence that he belongs to Scheduled Cast community and sitting without any job from the date of dismissal. The learned Advocate of Methani Colliery of M/s. Eastern Coalfields Limited has cross-examined the workman, but he has not stated any fact in contrary to his examination-in-chief. The Hon'ble Apex Court in **Shiva Nandan Mahto v/s The State Of Bihar & Ors (2013) 11 S C C page 626** has held that :

“if a workman is kept out of service due to the fault or mistake of the establishment / company he was working in, then the workman is entitled to full back wages for the period he was illegally kept out of service.”

18. In the light of law laid-down by the Hon'ble Apex Court the workman is entitled to full back wages for the period of dismissal. But it is relevant to note that the workman has been terminated on 22.10.1997, but he preferred the reference very late. The Notification of reference is of the year 2005. The Agent of Methani colliery of M/s. Eastern Coalfields Limited has specifically pleaded in his written statement that the workman has took the matter very late. This allegation has not been replied by the workman by filing rejoinder written statement. A Public sector undertaking should not suffer for delay by workman. Neither party to the reference has filed any documents about the age of the

delinquent workman. The concerned workman has stated his age as 40 years in his affidavit which was sworn on 30.07.2007. As per his affidavit at present his age would be approximately 50 years. It seems that he has put considerable period of service in M/s. Eastern Coalfields Limited. Keeping in view of his length of service, his age and fact of unemployment there is no possibility of getting alternate employment anywhere else.

19. In view of the above discussion, the action of management of Methani Colliery of M/s. Eastern Coalfields Limited in dismissing Shri Shankar Das, Driller from service with effect from 22.10.1997 is illegal and unjustified. The dismissal of Shri Shankar Das is hereby set-aside. The management of Methani Colliery of M/s. Eastern Coalfields Limited is directed to reinstate Shri Shankar Das with full back wages from the date of Notification of reference i.e. from 28.11.2005 till his reinstatement. It is further directed that Shri Shankar Das will be entitled to get all consequential benefits from the date of dismissal till his reinstatement. Shri Shankar Das will be imposed punishment of stoppage of 2 (Two) annual increments without cumulative effect.

ORDER

Let an "Award" be and the same is passed as per above discussion. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 11 अगस्त, 2017

का.आ. 1931.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एसईसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 119/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.07.2017 को प्राप्त हुआ था।

[सं. एल-22012/135/2012-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 11th August, 2017

S.O. 1931.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 119/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of M/s. SECL and their workmen, received by the Central Government on 26.07.2017.

[No. L-22012/135/2012-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/119/12

General Secretary,
Koila Mazdoor Sabha (HMS),
Q.No.M/91, Vikas Nagar,
PO Kusmunda,
Distt. Korba, Chhattisgarh ...Workman/Union

Versus

General Manager (P&A),
SECL, HQ Sipat Road,
Bilaspur, Chhattisgarh ...Management

AWARD

Passed on this 19th day of June 2017

1. As per letter dated 25-10-12 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/135/2012-IR(CM-II). The dispute under reference relates to:

“Whether the action of the management of General Manager, Kusmunda Area of SECL kusmunda, Distt. Korba (CG) as well as the General Manager (P&A), SECL Hq Bilaspur (CG) in not correction the date of birth of Shri Milan Kumar Pandey, Electric Fitter (i) as mentioned in Form B & CMPF records as 19-6-60 and (ii) on the basis of Vth as well as Matriculation Certificate as per I.I.No.76 of NCWA as legal, proper and justified? To what relief the said workman is entitled to and from what date?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim. Case of workman is that the dispute was raised before ALC, Bilaspur by Union for correction of date of birth. Management had filed reply on 24-3-2011 denying to correct dte of birth of workman. Rejoinder was filed by Union on 24-10-11. He submitted 5th & 8th class certificate issued prior to entering in the employment. ALC submitted failure report. The dispute has been referred. That workman was given appointment as General Mazdoor on 1-2-82 as land oustee. Land was acquired by WCL/SECL. At the time of his appointment, he submitted 5th & 8th passing certificate Board exam in 973, 1979. His date of birth was recorded 6-6-60. Management had prepared Form B register in which his date of birth was recorded 9-6-60. Workman pointed out difference of dates mentioned in Form B register and educational certificates but management did not take any action in the matter. Form A was filled for purpose of coal mine, PF. Date of birth was recorded 6-6-60, was authenticated by colliery Manager of SECL. In 1988, service excerpts were prepared. His date of birth was recorded 19-6-60. In educational qualifications, he was shown 10th standard pass. In 990, service of workman was terminated. In 1994, on the basis of arbitration award, he was reinstated and posted at establishment of Kusmunda area. In 1998, workman filled LTC. He was informed about his date of birth was changed on the basis of service register. During pendency of dispute before ALC, Bilaspur, he had submitted that his date of birth was corrected in service register on the basis of initial medical report form “O”. on perusal of both the documents, it reveals that initially his date of birth was correctly recorded. His date of birth was altered by somebody without putting signatures of Competent Authority. There was overwriting in his date of birth. Correction was not authenticated. The correction was made without intimation or his knowledge. He was continuously approaching management for correction of date of birth since 1998. He was requesting that his date of birth be rectified on the basis of 5th & 8th standard pass school certificate. Management started processing, his case was sent to company headquarter for clarification. In the year 2002, management prepared Form B Register at establishment of Kusmunda Area. Workman pointed out difference of date of birth in Form B register and prepared and initialed Form B register and certificates. He was answered that the clarification was sought from SECL hqr. Till such time, column of age will be kept blank. Accordingly recording was made in the column under dispute. On said assurance, after getting clarification from company headquarter, his date of birth will be rectified as per school certificate. He signed on Form B. management had not corrected his date of birth even after prolonged discussions. Application before ALC Bilaspur for correction of his date of birth. Finally the dispute has been referred for adjudication.

3. Ist party further submits that as per I.I.No.76, certificates of non-matriculate appointees, date of birth recorded as school leaving certificate will be treated as correct and shall not be altered in any circumstances. It was not followed in his case even after submissions of certificate of passing 8th standard produced at time of his initial appointment. Ist party has reproduced para b(1a) of I.I.765 and emphasized that the date of birth was correctly recorded as 6-6-90 as per 5th & 8th passing certificate. His date of birth is also correctly recorded on Form A of CMPF record and service register, date of birth was corrected in service register as 19-6-56 without signature of competent authority. As per I.I.76, the review on date of birth of existing employees can be made on the basis of matriculation certificate issued by recognized university or Board. The alteration in date of birth by management in Form B register without his knowledge is void. On such ground, workman prays for correction of date of birth 19-6-56 as per Form B and CMPF records. Workman prays for appropriate correction of his date of birth. 2nd party filed Written Statement opposing claim of Ist party. 2nd party has reproduced reference and submits that the workman raised dispute for correction of his date of birth as 6-6-60 against 19-5-56 recorded in official record. Workman was appointed as General Mazdoor Category I on 1-1-1984. At the time of his appointment, his medical examination was conducted. As per medical report, Form O, his date of birth was recorded in Form B Register and service record 19-6-56. In 1998, workman submitted his family particulars form PS-3, PS-4 his date of birth was declared as 9-6-56. Documents were bearing signature of workman. Workman did not produce documents required for conciliation of I.I.76 relating to qualification at the time of his appointment. In 1987, management published service excerpts of each of the employees inviting objections to rectify any anamoly. Workman did not raise any objection at that time. The date of birth of workman was recorded 9-6-56 as per form “O” was treated as correct. That workman has not pointed out any ground for correction of his date of birth and not produced any document for consideration of I.I.No.76 despite he was given opportunity to raise objection. It is reiterated that workman has not produced documents regarding his educational qualification at the time of his initial appointment on 1-1-84. Workman himself produced copy of Form B. His date of birth is shown 19-6-56 bears his signature. Workman not produced documents of his educational qualifications to support his date of birth as 6-6-60. The contentions of workman regarding alteration in his date of birth are imaginary. Reply was filed by management before ALC. Dispute has been referred. Dispute is raised after 14 years of grievance by workman regarding his date of birth. The documents relied by workman are doubtful. Area Manager always consult headquarter. It doesnot mention that the claim of

workman was admitted. That Form B Annexure W-13 was prepared as per information furnished by workman. He signed in token of acceptance of its contents. Workman has not produced documents regarding his execution. Claim of workman is false and deserves to be rejected.

4. Workman filed rejoinder reiterating his contentions in statement of claim. That in Form B Register and CMPF record, his date of birth was correctly mentioned 19-6-60. That service record of workman was prepared at the time of initial appointment of workman. He was medically examined. Workman had applied for LTC and after getting knowledge about change of his date of birth submitted application on December 1998 endorsing certificate of passing 8th and 5th standard. Rest of the adverse contentions in Written Statement filed by management are denied.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of General Manager, Kusmunda Area of SECL kusmunda, Distt. Korba (CG) as well as the General Manager (P&A), SECL Hq Bilaspur (CG) in not correcting the date of birth of Shri Milan Kumar Pandey, Electric Fitter (i) as mentioned in Form B & CMPF records as 19-6-60 and (ii) on the basis of Vth as well as Matriculation Certificate as per I.I.No.76 of NCWA as legal, proper and justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order.

REASONS

6. **Point No. 1-** The terms of reference pertains to not correcting date of birth of workman Milan Kumar Pandey as recorded in Form B and CMPF record as 19-6-60 on basis of 5th and matriculation certificate as per I.I.No.76 is legal and justified. Workman filed affidavit of his evidence. In his affidavit of evidence, workman claims he was appointed on 1-2-84 as general Mazdoor as land oustee. He passed 8th standard board exam in 1979, his date of birth is 6-6-60. On his medical examination, in form "O" and Form "B" his date of birth was recorded 19-6-60. When he joined membership of CMPF, in form A his date of birth was recorded 6-6-60. In 1987, in his service record prepared, the date of birth was recorded 19-6-60. In Form B accordingly his date of birth was shown. In 1988, when he was intending to take LTC benefit, he got information that his date of birth was recorded in service book 19-6-56. He submitted application to the management for correction of his date of birth. His date of birth was not corrected. Dispute was raised before ALC contending that his date of birth 19-6-60 interpolated as 19-6-56. As per I.I.76, his date of birth is not correctly mentioned as per certificates in middle school and matriculation. On 30-6-16, he was superannuated. From his evidence, documents Exhibit W-9 to 13 are admitted in evidence. In his cross examination, workman says his name was sent through Employment Exchange. He was appointed as General Mazdoor. Educational qualification is required for appointment as General Mazdoor. He denies that he not produced educational documents at the time of his appointment. He passed 8th standard in 1979. He was appointed on 1-2-84 as land oustee. He did not agree to the question that for appointment as land oustee, educational qualification is not considered. In his further cross, workman says he produced documents of passing 8th standard to Dy. Personal Officer Mr. Ghosh. receipt of documents was not given to him. After his first appointment, he was working in Kusmunda area. His Form B was prepared at both places of working. Form B was filled as per information given by him. W.r.t. contents of para-6 of his affidavit, he says there was interpolation in service record. When he had gone for taking LTC benefit, clerk told him his age was more than he was writing. At that time, he got knowledge about correction in his date of birth. Said incident is of 1998. Service record remains with the clerk. Clerk had shown him record. Pension scheme was introduced in coal India in 1997-98. After implementation of said scheme, signature on form PS-3, PS-4 was obtained. Those documents are marked Exhibit M-3,4. Workman explains that he was told that after instructions received from office about his date of birth, form would be corrected. Before submitting Exhibit M-3,4, S-3,4 he submitted representation to the management but any decision was not taken. He admits that for CMPF membership, Form A declaration is required to be submitted. In Form A, his date of birth is recorded 1956. Witness explained his date of birth in Form A is written 1960. Exhibit W-12 bears signature of CMPF Commissioner. His service record was prepared. Exhibit W-5 was supplied to him by Personal Officer Ghosh. He not submitted any application for supplying said document. That workman had produced marksheets before Personal Officer. The clerk keeping custody of documents is not his friend. In Exhibit W-5, date of birth 1956 was cancelled. Workman denied that date of birth in W-7 was filled by him in 1994. Witness was recalled and documents W-14 is roved from his evidence. Workman in his cross examination says Form B W-14 was prepared

in 1984 by management. At that time, his age was 23 years. After his appointment in 1984, he was transferred to other unit in 1994. Thereafter Form B was prepared. He denies that in Form B Register, his date of birth is recorded as per his say. He submitted application in 1998 regarding entry in Form B. the workman was unable to tell in which year he passed primary school examination he had appeared in examination of 5th standard. He not maintained certificates of passing all the standards. In Exhibit W-9 his date of birth is recorded 6-6-60. He received Exhibit W-10 in 1968. After Exhibit W-10 was referred to the witness, he says that he received said document in 1978. Workman says his date of birth in W-5 is not recorded as per his say.

7. Witness No.2 Balmik Prasad Shukla filed affidavit of evidence supporting claim of workman. That in 978, he was appointed as piece rated badly loader. He passed 8th standard. In Form B Register, his age was recorded 32 years as per I.I.76. he had requested for correction of his date of birth. His further evidence is devoted about correction of date of birth and superannuation as per the date shown in certificate of 8th standard 14-11-56. From evidence of witness, documents exhibit W-5 to 7 are admitted in evidence. In his cross examination, above witness says Age Determination Committee was appointed as per order of Hon'ble High Court. Thereafter he received Exhibit W-17. Workman was not appointed along with him. He claims ignorance about Form B and service record of workman. He claims ignorance about examination of workman by Medical Board.

8. Management's witness Suresh Kumar Gupta filed affidavit of evidence. He also says that workman was appointed as General Mazdoor Category I on 1-1-1984. At the time of his appointment, medical examination was conducted. Form O is produced. Service record of workman was maintained. Form B register was prepared. Ist party workman had submitted form PS P-4 in 1998. Workman declared his date of birth 19-6-56. Those documents bears signatures of workman. Documents regarding his qualification as per I.I.76 were not produced by workman. In 1987, management had published service excerpts showing date of birth and other particulars of the workman. His date of birth was recorded as 19-6-56 as per medical report Form "O" is correct. Workman had not taken objection. Workman has not pointed out any ground for correction of his date of birth. He did not produce documents as per I.I.76. In Form B register, date of birth of workman 19-6-56 is correctly recorded, it appears his signature. In his cross examination, management's witness says he is posted at Kusmunda Area from July 2016. He was not posted earlier at Kusmunda Area. His affidavit is based on record. He denies that since 1998, workman had repeatedly submitted application for correction of his date of birth. Management's witness denies that documents produced by workman were sent for verification of educational board.

9. Management filed affidavit of witness Sanjeev Kumar but he not appeared for cross examination, his evidence cannot be considered.

10. Turning to the documents Form PS-3,4, Exhibit M-3,4 submitted on 25-5-98, date of birth of workman is recorded 19-6-56. In Exhibit M-1 date of birth of workman is recorded 19-6-60 on 6-2-88. Exhibit M-1 is service excerpts of workman. In Exhibit M-2, form O, date of birth of workman is recorded 19-6-56. Initial date of birth written in said document, there is over writing. Correction is not authenticated by any authorities. Age 28 years is shown in Exhibit M-2. The overwriting in years of age appears clear. Said document is produced by management. Evidence of management witness is absolutely silent as to who has made overwriting in the original date of birth and years changing it to 19-6-56. In Exhibit W-4, Form B, date of birth of workman is recorded 19-6-60- both in letters and figures. Document W-15 to 17 pertains to witness No.2. Ist party Balmik Prasad Shukla are not relevant for deciding correct date of birth of workman. Ist party has produced documents received under RTI with Exhibit W-24.

As per ratio held in case between Narayan Singh versus Kalluram Kushwaha reported in 2015(2)MPLJ-337. Certified copies of documents received under RTI Act are admissible as secondary evidence. As these documents are covered under Section 65 of Evidence Act, there is no need to compare same with originals.

When the documents abut date of birth of workman are produced, I am not inclined to consider those documents as secondary evidence to decide the matter in dispute. Exhibit W- is application filed by Ist party before ALC raising dispute. Exhibit W-2 is reply by management. Exhibit W-3 is rejoinder filed before ALC, W-4 is copy of FOC. In Exhibit W-9,10, date of birth of Ist party workman is recorded 6-6-60. Exhibit W-9 was issued to workman on 26-4-73 before appointment of Ist party in February 1984. Exhibit W-1 certificate of passing middle school, date of birth of workman is written 6-6-60. The document was issued on 6-4-13. In Exhibit W-12, CMPF pass book, date of birth of workman is recorded 6-6-60. Document was attested by colliery Manager on 6-12-2002. In Exhibit W-5, date of birth of workman is recorded 19-6-56 but there is overwriting in the year 1956- letters as well are figures. Said overwriting in letters and figures in Exhibit W-5 is not explained by management. In Exhibit W-6, form O date of birth of workman is recorded 19-6-56. There is overwriting in figures and years. Overwriting is not explained in evidence of management's witness. W-13 is application submitted by workman for correction of his date of birth. It also bears endorsement about receipt of application on 13-12-98. In Form B, date of birth of workman is recorded 19-6-56. Exhibit W-8 not clearly show when said Form B was prepared. It refers to date of birth is recorded as per service sheet.

Management has produced service sheet of workman Exhibit W-8. Overwriting in entry is not authenticated under which his date of birth was recorded 19-6-56. Exhibit W-8 is copy of I.I.76.

Clause 1(i) & (ii) pertains to determinate of age at the time of appointment (i) Matriculates- date of birth recorded in the said certificate shall be treated as correct date of birth and the same will not be altered under any circumstances. (ii) Non-matriculates but educated the date of birth recorded in the school leaving certificate shall be treated as correct date of birth and the same will not be altered under any circumstances, (iv) Illiterate- in case of appointees not covered under the clause i to iii, the date of birth will be determined by the Colliery Medical Officer keeping in view any documentary and other relevant evidence as produced by the appointee.

Clause B(i)(a) provides that in case of existing employees, matriculation certificate or higher Secondary Certificate issued by the recognized universities or board or middle pass certificate issued by the Board of education and or department of public instruction and admit cards issued by the aforesaid bodies should be treated as correct provided they were issued by the said Universities/ Boards/ Institutions prior to the date of employment.

In present case, date of birth of workman was recorded 19-6-60 or 6-6-60 in CMPF. Documents Exhibit W-12, W-14. Evidence of management's witness is not cogent how date of birth of workman was corrected 19-6-56 in Exhibit W-7 Exhibit M-3,4,2 . in Exhibit M-1 date of birth is recorded 19-6-60. Evidence of management's witness is not convincing on what basis date of birth of workman was corrected as 19-6-56. As per I.I.No.76, Form O & A Medical Certificate cannot be considered when the certificates about educational qualifications are available. It would be worthwhile to discuss the arguments advanced by Shri A.K.Shashi that application for amendment filed by management was rejected vide order dated 1-8-16. The dispute was referred vide order dated 25-10-12. Statement of claim was filed on 3-9-13. Written Statement was filed by management on 4-2-14. Rejoinder filed on 10-7-14. Evidence of affidavit of workman was completed on 14-9-15. Management filed affidavit of his witness. Thereafter the case was fixed for cross examination proposing to refer the matter to Age Determination Committee. The application was rejected that amendment was not bonafide.

11. Learned counsel for management Shri A.K.Shashi relies on

Judgment in Civil Appeal No. 8634/13. Their lordship held in our opinion Division Bench has erred in extending benefits to the respondent who taken undue advantage by not producing matriculation certificate solely on the motive to get an entry into service.

The facts of present case are not comparable. Date of birth of workman as discussed above was recorded 19-6-60. Said date was corrected as 19-6-56. Therefore principles cannot be applied to case at hand.

12. Reliance is also placed by Shri A.K.Shashi in State of UP and another versus Shiv Narain Upadhyay reported in 2005(6)SCC-49, State of Tamil Nadu versus T.V.Venugopalan reported in 1994(6)SCC- 302., State of Haryana versus Satish Kumar Mittal reported in 2011(1)MPLJ, Judgement in WP No. 881/16, Writ Petition no. 5257/12, WP No. 3307/13, WPNo. 7063/13. The facts of present case are not comparable as date of birth of workman was recorded 19-6-60. Said date of birth was corrected by management as 19-6-56 is not explained in the evidence of management's witness. The correction made as per Form O,A , PS-3, 4 are not relevant for determining date of birth as I.I. Para b(a)(i). therefore judgment in all the matters cannot beneficially applied.

Ist party relies on ratio held in case between Delhi Cloth and General Mills Company Ltd and their workmen reported in AIR-1967-SC-469. Ratio held in the case is Tribunal must confine its adjudication to points of dispute referred and matters incidental thereto.

13. Matter also pertains to superannuation of workman during pendency of reference violating Section 33(2)(a) of ID Act. In this regard, Ist party relies on ratio held in case between

Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd versus Ram Gopal Sharma and others reported in 2002(2)SCC-244. Their Lordship dealing with Section 3(2) (b) proviso ID Act held effect of non-approval of order of discharge/ dismissal in such circumstances held the employee continues to be in service as if the order of discharge/ dismissal was never passed.

Reliance is also placed in case between Ram Kumar Yadav versus SECL reported in 2006(1)MPLJ-161. His Lordship held that date of birth interpolated as 25-7-45. The said interpolated entry not attested. As per relevant instructions, date of birth appearing in the matriculation certificate is to be treated as correct.

As discussed above, date of birth suffering from over writing 19-6-56 is not authenticated by any competent authority. Evidence of management's witnesses on the point is silent. Date of birth of workman 19-6-56 cannot be accepted.

In case between Bharat Cooking Coal Ltd versus Chhota Birsa Uranw reported in 2014-III-LLJ-SC-1. Their Lordship held dispute was not raised by respondent at fag end of career but almost two decades prior to his

superannuation. NCWA initiated by appellants clearly indicated existence of errors in service records. Appellants were aware of such errors and were taking steps to rectify same. Reliance on Form B does not hold good as it is admitted by appellant that errors existed in same.

In present case, date of birth of workman 19-6-56 is not authenticated. Date of birth recorded in Form A & O is relevant for determination of date of birth of workman. The date of birth recorded in earlier Form B is 19-6-60. In certificates of education, date of birth is recorded 6-6-60 deserves to be accepted in view of Para B(a)(i) of I.I.No.76. for above reasons, I record my finding that action of the management in not correcting the date of birth of Shri Milan Kumar Pandey, Electric Fitter (i) as mentioned in Form B & CMPF records as 19-6-60 and (ii) on the basis of Vth as well as Matriculation Certificate as per I.I.No.76 of NCWA is illegal and consequent retirement of workman on 30-6-2016 is also illegal.

14. In the result, award is passed as under:-

- (1) The action of the management in not correcting the date of birth of Shri Milan Kumar Pandey, Electric Fitter (i) as mentioned in Form B & CMPF records as 19-6-60 and (ii) on the basis of Vth as well as Matriculation Certificate as per I.I.No.76 of NCWA is illegal.
- (2) The order of superannuation of workman w.e.f.30-6-2016 is quashed. 2nd party management is directed to reinstate workman and also pay salary for the period from 30-6-2016 till his reinstatement.
- (3) Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 11 अगस्त, 2017

का.आ. 1932.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यूसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 13/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 26.07.2017 को प्राप्त हुआ था।

[सं. एल-22012/221/2012-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 11th August, 2017

S.O. 1932.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 13/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of M/s. WCL and their workmen, received by the Central Government on 26.07.2017.

[No. L-22012/221/2012-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/13/2013

Coal Mines Engineering Workers Association,
Ward No.10, Po Palachouria,
Distt. Chhindwara (MP)

...Workman

Versus

General Manager,
WCL, Pathakheda Area, Post Pathakheda,
Distt. Betul

...Management

AWARD

Passed on this 22nd day of June 2017

1. As per letter dated 16-1-2013 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-22012/221/2012-(IRCM-II). The dispute under reference relates to:

“Whether Shri Rakesh Chouhan services were illegally terminated vide order dated 22-9-05 without following provision of certified standing order. what relief he is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party was granted repeated chargesheet. However it failed to file statement of claim. Ist party is proceeded ex parte on 15-3-17.

3. 2nd party filed ex parte Written Statement. Case as pleaded by 2nd party is Ist party has not filed statement of claim as per Rule 10(b). Ist party workman was working as General Mazdoor Token No. 2013 at Tawa Mine, Pathakhera Area of WCL. Workman was habitual absentee. His attendance particulars are shown in para-5 of Written Statement. Attendance 68 days in 2001, 7 days in 2002, chargesheet was issued to workman on 27-7-04. DE was conducted, Shri S.K.Sahu was appointed Enquiry Officer, Shri M.S.Parihar was appointed as Management Representative. Workman failed to attend enquiry proceedings despite notice published in daily Navbharat on 9-6-05. Enquiry was conducted in absence of workman. Enquiry Officer submitted report holding workman guilty of all charges.

4. Management's witness Shri V.S.B Rao filed affidavit covering whole contentions in Written Statement filed by management. From evidence of management's witness, documents of enquiry M-1 to 8 are proved. Ist party remained absent and failed to cross examine the witness of management. From evidence on record, it is established that services of Ist party are terminated for unauthorized absence conducting enquiry. Evidence clearly established that services of Ist party workman is not illegal. Reference is answered in favour of management. Workman is not entitled to any relief.

5. In the result, award is passed as under:-

- (1) The action of the management in terminating services of Shri Rakesh Chouhan services vide order dated 22-9-05 without following provision of certified standing order is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 11 अगस्त, 2017

का.आ. 1933.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एसईसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 11/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 26.07.2017 को प्राप्त हुआ था।

[सं. एल-22012/141/2012-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 11th August, 2017

S.O. 1933.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 11/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of M/s. SECL and their workmen, received by the Central Government on 26.07.2017.

[No. L-22012/141/2012-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/11/14

Secretary,
Koyna Shramik Sangh (CITU),
Branch Bangwar Project, Po Bemhouri,
Distt. Shahdol (MP)

...Workman/Union

Versus

Sub Area Manager,
Amlai Bangwar SA of SECL,
PO Bemhouri,
Distt. Shahdol (MP)

...Management

AWARD

Passed on this 14th day of June 2017

1. As per letter dated 31-1-14 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/141/2012-IR(CM-II). The dispute under reference relates to:

“Whether the action of the General Manager, Sohagpur Area of SECL in not promoting Shri Rakesh Tiwari to Electrician Cat-IV and non-payment of wages for the period 1-8-2011 to 26-8-11 is legal and justified? To what relief the claimant is entitled for and from which date?”

2. After receiving reference, notices were issued to the parties. Workman failed to appear despite repeated notices. Workman is proceeded ex parte on 2-3-17.

3. 2nd party management filed Written Statement in the matter. 2nd party submits that workman has not filed statement of claim as per Rule 10(b) of ID(C) Rules. It is also submitted that workman/ Union had raised identical reference in R/124/12 pertaining to denial of promotion to workman from Rakesh Tiwari to the post of Electrical Cat-IV. That present reference is made in view of order passed in W.P.No. 507/13 w.r.t. allegations of non-payment of wages. It is pleaded that workman is entitled to receive wages for the work he had done. In present case, workman did not work therefore he is not entitled to receive wages claimed by him. Workman was in habit of not performing job allotted to him in underground after marking his attendance. Underground workers are not paid underground allowance unless he performs the work. That absenteeism from work, refusal to perform work disentitles workman from his career growth. Workman refused to work in underground therefore he was not paid wages. However no disciplinary proceedings were initiated against workman for his refusal to perform duty. Management has filed Written Statement in R/134/12, its copy is produced in the matter. On such ground, it is submitted that workman is not entitled to claim for surface duty, promotion to the post of Electrician Cat-IV, wages for the period from 1-8-11 to 26-8-11.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the General Manager, Sohagpur Area of SECL in not promoting Shri Rakesh Tiwari to Electrician Cat-IV and non-payment of wages for the period 1-8-2011 to 26-8-11 is legal and justified?	Workman not participated in reference proceeding, the point could not be decided on merit.
(ii) If not, what relief the workman is entitled to?”	Workman is not entitled to any relief.

REASONS

5. Ist party has not filed statement of claim, he is proceeded ex parte. Management filed Written Statement. The contentions are narrated above. The affidavit of evidence of Manish Bhandari is filed by 2nd party supporting averments in Written Statement. Documents Exhibit M-1 to 9 are produced by the management are admitted in evidence. Evidence of witness of management remained unchallenged as Ist party failed to participate and cross examine witness of management. I find no reason to disbelieve the documents produced by management Exhibit M-1 to 9. Workman did not work underground, he was not paid underground wages. For above reasons, I record my finding that issue could not be decided on merit as Ist party failed to participate in reference.

6. In the result, award is passed as under:-

- (1) The dispute under reference could not be decided on merit for failure of workman to participate in reference proceeding.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 11 अगस्त, 2017

का.आ. 1934.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एसईसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 50/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 26.07.2017 को प्राप्त हुआ था।

[सं. एल-22012/24/2010-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 11th August, 2017

S.O. 1934.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 50/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of M/s. SECL and their workmen, received by the Central Government on 26.07.2017.

[No. L-22012/24/2010-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/50/2010

Secretary,
Koyna Udyog Kamgar Sangathan,
Branch Kurja, Q.No.B-3/45,
Kapildhara Colony, PO Bijuri,
Distt. Annupur (MP) ...Workman/Union

Versus

Chief General Manager,
Hadeo Area of SECL,
PO South Jhagrakhand,
Distt. Korba (Chhattisgarh) ...Management

AWARD

Passed on this 15th day of June, 2017

1. As per letter dated 26-11-2010 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/24/2010-IR(CM-II). The dispute under reference relates to:

“Whether the action of the Manager, Kurja Sub Area of SECL (Hasdeo Area of SECL) amounts to illegal lockout? If yes, what should be gravity of penalty for such action and secondly the action of the Management in deducting wages of the workmen construing them to be absence from duty (when their action of alleged illegal lockout is under controversy) is legal and justified? If not, to what relief the workmen are entitled for?”

2. After receiving reference, notices were issued to the parties. 1st party filed statement of claim. Case of workman is that management had extended hours by one hour from casual duty of the workmen without paying overtime. Union opposed extension of duty allotted by management on ground that management was not paying for overtime for the extended period due to opposition by Union on 25-8-09. When workman represented by Union came for duty, they were not allowed to enter the premises by management. As such management had illegally resorted to lockout. Workers were setting outside gate office. It is alleged that the Manager of Kurja Sub Area forcibly lockout the workman. Attendance of workman was cancelled. Said act of the management was opposed by workman and Union. The incident was reported to CGM, Hasdeo. Police was informed about incident lodging FIR about conduct of the

Manager. The dispute was raised before ALC, Shahdol, notice was issued to management. It is reiterated that despite various meetings for conciliation, matter was not settled. That on 31-8-09, management served chargesheet and notice for deduction for 8 days wages under PW Act. That management sent information to the Union vide letter dated 21-10-09 about deduction of wages of 409 workmen amounting to Rs.33,40,000 without giving opportunity to the workers. Management was adamant. There was no amicable solution. Matter ended in failure, dispute has been referred. Ist party prays that lockout be held illegal. The deduction of wages by management be set aside and restore wages to the workman with 24 % interest.

3. 2nd party filed Written Statement opposing claim of Ist party. 2nd party submits that reference is highly prejudicial. Government has come to wrong conclusion there was illegal lockout. Question of illegal lockout does not arise. Government has exceeded jurisdiction by arriving to wrong conclusion. That SECL is subsidiary of coal India declared as public unitality services. Present dispute is raised by newly formed Union. That INTUC BMS, AITUC, CITU are recognized Union operating in Coal India. That claimants are not members of Union in IR system. Management take all steps to keep Industrial Harmony, Industrial Peace. Employees of Coal India are covered by recommendations of Wage Board. There are 4 lakhs employees working in Industrial Estates. The services of employees in coal industry are covered by NCWA. There are 12 area and sub areas carrying 95 mines. Coal mining industry is declared as public utility services. The strike is started following procedure. Employees of Kurja Mine went on unauthorized strike on 24-8-09, 25-8-09 in violation of provisions of ID Act. Union had submitted demand notice dated 22-8-09 raising 8 demands. That on 25-8-09 8.30 AM, 95 workers left work place after marking their attendance. As per the management, it was illegal strike resorted by employees that about 400 workers participated in illegal strike. Illegal strike was resorted in violation of Section 22 of ID Act. Management had not prohibited workman from work. There was no lockout. It is alleged to be illegal strike by workman. The appeal by management were not considered. On such ground, 2nd party prays for rejection of claim.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the Manager, Kurja Sub Area of SECL (Hasdeo Area of SECL) amounts to illegal lockout?	In Negative
(ii) Whether the action of the Management in deducting wages of the workmen construing them to be absence from duty (when their action of alleged illegal lockout is under controversy) is legal and justified?	Deduction of wages for absence from work is legal.
(iii) If not, what relief the workman is entitled to?"	Workmen are not entitled to any relief.

REASONS

5. As per statement of claim, Ist party Union is alleging illegal lockout on part of management. 2nd party in its Written Statement is denying lockout on its part. Rather management is alleging illegal strike resorted by employees.

6. Ist party did not file evidence. Evidence of Union is closed on 12-5-2016.

7. Management filed affidavit of evidence of Arun Kumar Srivastava supporting contentions in Written Statement filed by management. As per Para-9 of affidavit of evidence of management's witness, employees of Kurja Mine went on CL on 24-8, 25-8 violating provisions of ID Act. In para 10, management's witness states workers left their work place on 25-8-09, 95 workers left work place after making attendance. Management has issued appeal to the Union leaders not to resort to illegal strikes. Appeal were displayed on notice board. Management issued notice to 400 workers who observed illegal strike. Ist party remained absent and failed to cross examine witness of management. Documents produced by Ist party admitted by management Exhibit W-1 is notice by Conciliation Officer to Sub Area Manager, Kurja. Management produced documents M-1. Notice issued by Union to stop work in mines of Hasdeo Area. The demands of Union produced at Exhibit M-2 notice was issued on 22-8-09. Appeal by management was produced at M-3(1) to (3) requesting employees to resume their work. Exhibit M-4 is chargesheet issued to Shri C.M.Shivhare. Exhibit M-5 chargesheet issued to Raghunandan M-6 chargesheet issued to Ramkhilawan, M-7 chargesheet issued to Amarsai, M-8 to Bhaiyalal, M-9 to Brijendra, M-10 to Ram Khilawan, M-11 to Gautam Pal. Exhibit M-12 is about approximate production and monetary loss. M-13 is letter sent to ALC, M-14 is information sent to police station. The term of reference does not pertain to legality of strike alleged by workers. As per Section 22 ID

Act, strike and lockouts are prohibited without giving to the employer notice of strike within six weeks before striking or without fourteen days of giving such notice or before expiry of the date of strike specified in any such notice or during pendency of any conciliation proceedings. Illegal strike is required to be decided as per Section 24 of I.D. Act. Present reference is not cover illegal strike alleged by the management. So far as term of reference pertain to illegal lockout, Union has not adduced evidence w.r.t. imposing penalty by management, deduction of wages of workmen for absence from duty is permissible under Section 7 & 9 of Payment of Wages Act. Accordingly I record my finding in Point No.1, 2.

8. In the result, award is passed as under:-

- (1) Union has failed to prove that management resorted to illegal lock out. Management can deduct wages for absence from work subject to Section 7 & 9 of Payment of Wages Act.
- (2) Ist party Union is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 11 अगस्त, 2017

का.आ. 1935.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एसईसीएल के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 22/2000) को प्रकाशित करती है जो केन्द्रीय सरकार को 26.07.2017 को प्राप्त हुआ था।

[सं. एल-22012/293/1999-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 11th August, 2017

S.O. 1935.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 22/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of M/s. SECL and their workmen, received by the Central Government on 26.07.2017.

[No. L-22012/293/1999-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/22/2000

Shri Uday Singh Ukey
House No.8/34,
South T.T.Nagar,
Bhopal (MP)

...Workman

Versus

General Manager,
Coal Complex, Divisional Office,
Raisen Road,
Bhopal (MP)

...Management

AWARD

Passed on this 20th day of June 2017

1. As per letter dated 6-7/1/2000 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-22012/293/99/IR(CM-II). The dispute under reference relates to:

“Whether the action of the management of South Eastern Coalfields Limited in terminating the services of Shri Uday Singh Ukey S/o Shri Babulal Ukey w.e.f. March 1997 is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. 1st party workman submitted statement of claim at Page 3/1 to 3/2. Case of workman is that in 1986, he was engaged as watchman on daily wages. He was working as night watchman till 30-3-97. His services were orally terminated. He completed more than 240 days continuous service during each of the year. His services were terminated in violation of Section 25-F,G,N of ID Act. He was not called for re-appointment. On such ground, workman prays for his reinstatement with backwages.

3. 2nd party filed Written Statement at Page 8/ to 8/8 opposing claim of workman. Management raised preliminary objection that while making reference, Government has assumed the facts not in existence. There is no employer employee relationship between parties. The reference is not tenable.

4. Management has referred to ratio held in various cases and reiterates that reference is not tenable. Workman was engaged for doing miscellaneous jobs intermittently as casual worker. Workman was paid wages. Workman was not continuously working. Workman was paid wages from contingent fund. He was not working in mine neither he was engaged for work connected with mining operations. Workman not completed 240 days continuous service. It is denied that workman is illegally terminated amounts to retrenchment. Management denies that workman is terminated in violation of Section 25-F of ID Act. That when person is engaged on daily wages, his engagement ends at end of day. His dis-engagement is covered under Section 2(oo)(bb) of ID Act. Workman is not entitled to protection of Section 25-F of ID Act as he had not completed 240 days continuous service. It is denied that termination of workman is in violation of Section 25-F a,b. Management prays that reference be answered in its favour.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of South Eastern Coalfields Limited in terminating the services of Shri Uday Singh Ukey S/o Shri Babulal Ukey w.e.f. March 1997 is justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

6. The term of reference pertains to legality of termination of services of workman. Workman filed affidavit of his evidence but he did not appear for his cross examination. Evidence of workman was closed on 18-2-2010.

7. Management filed affidavit of evidence of witness Shri Vijay Srivastava. Evidence of management's witness is devoted on the point that workman was not engaged in mining activities. He not completed 240 days continuous service. Workman was engaged by officer for doing the miscellaneous jobs intermittently on contingency basis. Management's witness in his cross says he is acquitted with workman Uday Singh. In 1986, he was not posted in Bhopal office. Bhopal office was established in 1989. In 989, workman was engaged as per need. He was unable to tell working days of workman. He denies that during 1986 to 97, workman was continuously working. Office maintains attendance register of employee. Payments are made from contingency head, no availability is executed with daily wage employees.

8. Management's witness Rakesh Nema filed his affidavit. Affidavit of said witness is devoted on the point that for availing service of security personnel, management obtained sanction from headquarter. From his evidence, document Exhibit M-2 is admitted in evidence. In his cross-examination, said witness of management says he was not working in SECL, Bhopal during 1986 to 1990. He claims ignorance about signatures of guards in the register before resuming duty. He denies that wages were paid after getting the signature of security guard. He was unable to tell whether workman completed 240 days service during 86 to 89. The documents produced Exhibit M-1 is I Card of workman admitted by management. Exhibit M-2 is certificate issued by management. Workman was working as part time domestic servant on casual basis in December 1984. Exhibit W- shows workman was paid 658.80 Rs. Wages for 15 days on 2-5-96. Exhibit W-2 shows payment of Rs.23.04 in march 88 to the workman. Exhibit W-3 is payment for 8 days in January 1988. Exhibit W-4 is payment of Rs.36 to workman for 3 days in January 88, Exhibit W-5 is payment of Rs. 13.44 to workman as night guard on 5-2-88. In documents Exhibit W-6 to 24, various payments are made to workman during the year 1987. 1st party workman claims he was continuously working from 86 to 97, documents produced do not establish workman was continuously working till 1997. As such workman is not entitled to protection of Section 25-F of ID Act. During Course of argument, it was submitted that workman was regularized allowing pay scale benefit, the relief of reinstatement/ legality of termination was not pressed.

9. Learned counsel for management Shri A.K.Shashi relies on ratio held in case between-

M.D.Karnataka Handloom Dev Corporation Ltd. versus M.L.Raval reported in AIR 2007-SC-631. Their Lordship dealing with Section 25-F, 2(oo)(bb) ID Act held respondent engaged on contract basis, assigned to train weavers on time specific short term scheme sponsored by State Handloom Dev Corpn paid stipend is not a worker.

The facts of present case are not comparable. Ratio cannot be applied to case at hand.

In case between Director, Institute of Management Development versus Pushpa Srivastava reported in AIR 1992-SC-2070. Their Lordship held adhoc appointment on contractual basis for six months continued for more than a year. No ground for claiming that appointee is entitled for regularization in service.

The facts of present case are not comparable. Ratio cannot be applied to case at hand.

In case between Surendranagar District Panchayat versus Dahyabhai Amarsingh reported in 2005(8)SCC-750. Their Lordship dealing with Section 25-F and B of ID Act held facts must be proved by workman to claim protection under Section 25-F of ID Act. Burden of proof lies on workman to prove 240 days continuous working.

In present case, workman not appeared for his cross examination. His documents on record does not establish workman was continuously working for 240 days preceding date of his termination in 1997. For above reasons, I record my finding in Point No.1 in Affirmative.

10. In the result, award is passed as under:-

- (1) The action of the management of South Eastern Coalfields Limited in terminating the services of Shri Uday Singh Ukey S/o Shri Babulal Ukey w.e.f. March 1997 is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 11 अगस्त, 2017

का.आ. 1936.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यूसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 54/2002) को प्रकाशित करती है जो केन्द्रीय सरकार को 26.07.2017 को प्राप्त हुआ था।

[सं. एल-22012/304/2000-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 11th August, 2017

S.O. 1936.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 54/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of M/s. WCL and their workmen, received by the Central Government on 26.07.2017.

[No. L-22012/304/2000-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/54/2002

General Secretary,
MPKKMP(HMS),
PO Junnardeo,
Chhindwara

...Workman/Union

Versus

Manager,
Mohan Colliery of WCL,
PO Ambara,
Chhindwara (MP)

Management

AWARD

Passed on this 20th day of June 2017

1. As per letter dated 22-3-02 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/304/2000-IR(CM-II). The dispute under reference relates to:

“Whether the action of the management of Mohan colliery of WCL, PO Ambara, Distt. Chhindwara (MP) in not correcting the date of birth of Shri Anaklal S/o Dayachand, Socketman of Mohan colliery and retiring him from services w.e.f. 1-7-00 is legal and justified? If not, to what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 2/1 to 2/2. Case of workman is that as per record, his date of birth is 1-7-40. He is superannuated on 1-7-00. He further submits that his date of birth 1-9-50 is not recorded in the respective records. On his application, management had constituted committee. Workman submitted documents. He had not given any information about correction of his date of birth. Assurance was given to him that his date of birth was corrected. He received letter about his retirement. That his date of birth was not correct, date of birth of one Khalasi was corrected. Workman submits that his date of birth 1-9-50 is not recorded and he is illegally superannuated. On such ground, workman prays for correction of his date of birth and reinstatement with backwages.

3. Ist party has also submitted statement of claim at Page 5/1 to 5/3 reiterating his date of birth is 1-9-50. In record, his date of birth was recorded as 1-7-1940 and he is superannuated on basis of date of birth recorded in the record without correcting the same.

4. Management filed Written Statement at Page 61 to 6/5 opposing claim of workman. 2nd party contends it is subsidiary of coal India Ltd. WCL is registered under Company's Act, service conditions of coal mines workers are governed by NCWA. Several mines legislations are applicable to the management including Mines rules, Mines Act and Coal Mines Regulations Act. Section 48, Rule 51,77 and 77-A(2) provides for maintaining Form B in each of the collieries. Form B of workman was maintained. Workman had signed in token of its correctness. After going through I.I.No.37, 76, for determination of age, medical Board is required to be constituted. Age Determination Committee considered those cases of variation in age recorded by the management. Age Determination Committee considered those cases referred by management where there is a glaring disparity in the age recorded. The Age Determination Committee declared the age of workman 1-7-40 as correct. As per decision of Age Determination Committee, vide communication dated 26-10-88, workman was superannuated on completion of 60 years of age on 30-6-00. 2nd party denies that date of birth of workman is 1-9-50 it is submitted that the age of workman was wrongly recorded 22 years by the management. Management reiterates that on the basis of date of birth 1-7-40, workman was superannuated. It is denied that date of birth of workman is 1-9-50. On such ground management prays reference be decided in its favour.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Mohan colliery of WCL, PO Ambara, Distt. Chhindwara (MP) in not correcting the date of birth of Shri Anaklal S/o Dayachand, Socketman of Mohan colliery and retiring him from services w.e.f. 1-7-00 is legal and justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?”	Workman is not entitled to any relief.

REASONS

6. Point No.1 The term of reference pertains to management not correcting date of birth to workman and retiring him on 1-7-00. Workman filed his affidavit of evidence supporting his claim. The contentions that he was appointed on 20-3-73 as Trammer in Burkui colliery. At the time of his initial appointment in Form B Register, his age was

shown 22 years. He was appointed after required verification as per entry in Form B, his date of birth should have been recorded -9-50 and should have been superannuated on 1-10-10. Without giving any opportunity of hearing as per order dated 10-1-00, he was superannuated on 1-7-00 is illegal. In his cross, workman says his date of birth is 1-9-50. He studied 2nd standard at Morkund Distt. Chhidnwara. It is a Government school. He was unable to tell when he left said school in 1973, when he was appointed, he had produced certificate. In Form B Register prepared by the management, his age was recorded 22 years. His date of birth was not recorded as per the age shown in Form B. he was appointed on post of General Mazdoor. He claims ignorance when he received I Card, Identity Card was written as per his say. His date of birth was 1951.

7. Management's witness A.K.Sharma filed affidavit of his evidence. That workman was initially appointed in Mohan colliery in Kanhan Area. As per NCWA-IV & I.I.No.37 & 76, the date of birth of workman can be modified. Whenever Age Determination Committee satisfied that there is a glaring disparity that the date of birth recorded in the company record and the apparent age of the employee, the cases will be referred to the Apex Medical Board. As there was glaring disparity in the age recorded in official record, the case of workman was referred to the Age Determination Committee. Said committee examined case of workman as per I.I.76 and declared date of birth of workman as 1-7-1940. Said decision was communicated to workman on 26-10-88. Workman was retired on basis of said date of birth. Workman submitted PS-3,4 declaring his date of birth 1-7-40. From evidence of management's witness, ADL report is marked Exhibit M-2(a). management's witness in his cross examination claims ignorance whether workman produced documents at the time of his initial appointment. He had seen PS-3, PS-4 & ADL report. He also seen Form B prepared after initial appointment of the workman. He denied that PS-3,4 were not filled by workman. Form B was not filled by workman himself. As there was dispute about age of workman, matter was referred to ADC. Management's witness was unable to tell which documents were considered by ADC.

8. The documentary evidence in Exhibit W-2 order dated 16-1-00 date of retirement of workman is shown 1-7-00. Exhibit W-3 is letter dated 8-4-00 forwarding Form B showing age and date of appointment of workman. Date of appointment of workman is shown 20-3-73 age 22 years. Exhibit W-6 is letter dated 8-4-00 regarding date of birth of workman. His age is shown 22 years, date of appointment 20-3-72. In Exhibit W-8, letter addressed by AL, Chhindwara to management. ALC had advised to amend date of birth of Anaklal considering his age 22 years at the time of his initial appointment 20-3-73. Management did not follow the advice, dispute has been referred. Exhibit W-9 is order of superannuation of Faizuddin. Exhibit M-1 is copy of I.I.76 issued on 25-4-88. Para 1(iv) pertaining to illiterate employees provided in cases of appointee not covered at Category I to III, date of birth will be determined by the colliery medical officer keeping in view any documentary and other relevant evidence as produced, the date of birth as shown be treated as correct. Evidence of workman is clear that he not produced any document at the time of his initial appointment. As per Exhibit M-2, date of birth of workman is shown 1-7-40. In Exhibit M-3, date of appointment of workman is shown 20-3-73 age 22 years. However in PS Form 3,4, Exhibit M-4,5 submitted on 29-5-98, workman himself has shown his date of birth 1-7-40. As workman has not produced any documents about his date of birth of workman was recorded 1-7-40 in M-2,3,4 since 1998, workman did not take steps for correction of his date of birth till his superannuation. The dispute is raised after superannuation of workman on 22-3-02.

9. In Exhibit M-2(a) ADC has referred to the procedure laid down in I.I.37, the Committee examined all cases and on the basis of Age recorded in new Form B and also documentary evidence produced by workman, medical opinion by physical examination, visual examination, age of 60 employees contained in annexure was accepted.

10. Shri A.K.Shashi for management on the point relies on ratio held in case between-

Union of India versus Harnam Singh reported in 1993(2)SCC-162. Their Lordship dealing with retirement and date of birth held the period of 5 years for alteration prescribed in Note 5 to FR 56(m) as substituted in 1979. Held those already in service prior to 1979 for a period of more than 5 years obliged to seek alteration within the maximum period of 5 years from the date of coming into force of amended Note 5 in 1979.

In case of State of UP and another versus Shiv Narain Upadhyaya reported in 2005(6)SCC-49. Their Lordship held High Court erred in concluding that date of birth as recorded in service book was not correct and accepting the date of birth as pleaded by respondent.

In case between State of Haryana versus Satish Kumar Mittal reported in 2011(1)MPLJ-302. Their Lordship dealing with application for correction in service record held must be made within the time provided in the rules. If time limit is not prescribed, then within a reasonable time.

In case between General Manager, Bharat Coking Coal Ltd. West Bengal versus Shub Kumar Dushab and others reported in 2000(8)SCC-696. Their Lordship dealing with determination of date of birth held where question regarding correctness of date of birth as entered in service record raised by employee long after his joining the service and the employer decided the question following the procedure prescribed by statute, statutory rules or instructions held in

absence of any arithmetical or typographical error apparent on the fact of the record, High Court should not interfere with such decision of the employer.

In present case, service of Ist party workman is not covered by Finance rules. His service are covered by I.I.37, 76. The date of birth of workman was decided by ADC in the year 1988. Workman did not challenge said decision of ADC till his superannuation. For above reasons, I record my finding in Point No.1 in Affirmative.

11. In the result, award is passed as under:-

- (1) The action of the management of Mohan colliery of WCL, PO Ambara, Distt. Chhindwara (MP) in not correcting the date of birth of Shri Anaklal S/o Dayachand, Socketman of Mohan colliery and retiring him from services w.e.f. 1-7-00 is legal and proper.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 11 अगस्त, 2017

का.आ. 1937.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एसईसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 61/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.07.2017 को प्राप्त हुआ था।

[सं. एल-22012/280/2004-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 11th August, 2017

S.O. 1937.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 61/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of M/s. SECL and their workmen, received by the Central Government on 26.07.2017.

[No. L-22012/280/2004-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/61/2005

The Vice President,
Samyukta Koyla Mazdoor Sangh (AITUC),
C/o Sanjay Mishra, Telephone Exchange,
PO Kotma Colliery, Distt. Annuppur,
Annuppur (MP)

...Workman

Versus

Sub Area Manager,
Kotma Govinda Sub Area,
South Eastern Coalfields Limited,
PO Kotma, Distt. Annuppur,
Annuppur (MP)

...Management

AWARD

Passed on this 21st day of June, 2017

1. As per letter dated 8-7-05 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-22012/280/2004-IR(CM-II). The dispute under reference relates to:

“Whether the action of the Sub Area Manager, Govinda Sub Area of the Jamuna and Kotma Area of SECL in not correcting the date of birth of Shri Jaiveer in the service records on the basis of transfer Certificate/ marksheets and maintaining the records by simply mentioning the DOB as 25 years on 1970 (instead of reflecting correct date of birth i.e. 1-3-1950 without any corroborative evidence is legal and justified?”

2. After receiving reference, notices were issued to the parties. Ist party workman filed statement of claim claiming that his date of birth is 1-3-1950. His date of retirement would be in the month of March 2010.

3. Management filed Written Statement opposing claim of workman. Both parties adduced oral and documentary evidence. After hearing argument, case was fixed for award on 31-5-17. On that day, counsel for Ist party submitted application for withdrawal of case. Case was adjourned for verification of workman today. Workman has not appeared. Application is filed on behalf of workman along with his affidavit that he does not want to prosecute the case. Management has given no objection. For above facts, matter could not be decided on merit. Reference stands disposed as withdrawn by Ist party workman.

R. B. PATLE, Presiding Officer

नई दिल्ली, 11 अगस्त, 2017

का.आ. 1938.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यूसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 58/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26.07.2017 को प्राप्त हुआ था।

[सं. एल-22012/386/1999-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 11th August, 2017

S.O. 1938.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 58/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of M/s. WCL and their workmen, received by the Central Government on 26.07.2017.

[No. L-22012/386/1999-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/58/2000

The President,
Coal Mines Engineering Workers Association,
PO Palachourai,
Distt. Chhindwara (MP)

...Workman/Union

Versus

General Manager, Kanhan Area,
M/s. Western Coalfields Ltd.,
PO Dungaria,
Distt. Chhindwara

...Management

AWARD

Passed on this 22nd day of June, 2017

1. As per letter dated 10-29/2/2000 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-22012/386/99/IR(CM-II). The dispute under reference relates to:

“Whether the action of the Manager, Ambara Colliery, WCL PO Ambara Distt. Chhindwara (MP) in dismissing Shri Premchand S/o Raituh, General Mazdoor of Ambara colliery from services w.e.f. 21-6-96 is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Statement of claim is submitted by Coal Mines Engineering workers Association at Page 3/1 to 3/3. Case of Union is that services of workman Premchand S/o Raituh General Mazdoor in Ambara colliery, had submitted application for leave on 23-8-95. He was absent from 3-6-95. Chargesheet was wrongly issued about his absence from 3-5-95 to 1-11-95. Though workman had submitted application for leave after two months, he was marked absent on duty. Chargesheet was issued to workman. Punishment has to be imposed considering gravity of misconduct. After issuing chargesheet, Enquiry Officer was appointed. Unauthorized absence of workman was considered. Grievous punishment and major punishment has been imposed. Dismissal of workman is illegal. On such ground, workman prays for his reinstatement with backwages.

3. 2nd party filed Written Statement at Page 5/1 to 5/6 opposing claim of workman. 2nd party submits that reference is not legal. The Ministry had once refused to refer the dispute. The dispute is raised by coal mines Engineering workers Association. It has no locus to raise the dispute. Termination of workman from 21-6-96 is challenged. Workman was unauthorisely absent from 3-6-95 to 1-11-95 after issuing chargesheet and conducting enquiry. Charges were held proved. Considering the proved charges of unauthorized absence, punishment of dismissal is imposed. Management submits that workman was given proper opportunity for his defence. Absence from duty caused loss of production. Considering proved misconduct, claim of workman for reinstatement cannot be allowed.

4. Ist party filed rejoinder at Page 6/ to 6/2 reiterating his contentions in statement of claim.

5. As per order dated 21-6-13, enquiry conducted against workman is found legal.

6. Considering pleadings on record and findings on enquiry, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the charges alleged against workman are proved from evidence in Enquiry proceedings?	In Affirmative
(ii) Whether the punishment of dismissal imposed against workman is proper and legal?	In Affirmative
(iii) If not, what relief the workman is entitled to?”	Workman is not entitled to any relief

REASONS

7. The term of reference pertains to legality of dismissal of Ist party workman. Documents of enquiry are produced at Exhibit M-1 to M-10. Shri Nasimuddin Siddiqui has filed affidavit but he not appeared for his cross examination. His evidence cannot be considered.

8. In reply to chargesheet, workman had admitted his absence from duty. Defence was his wife was suffering from illness. Thereafter he suffered from illness and not attend the case. He prayed to be excused. Medical certificates are produced by workman for certain period which are admitted. Period of absence admitted by workman and medical certificates produced by workman appears for overlapping period. The proved unauthorized absence is for about six months. Workman has not examined himself in the matter on the point of preliminary issue or on other issues. Considering above aspects, in my considered view, interference in the punishment would not be appropriate. For reasons above, I record my finding in Point No.1,2 in Affirmative.

9. In the result, award is passed as under:-

- (1) The action of the Manager, Ambara Colliery, WCL PO Ambara Distt. Chhindwara (MP) in dismissing Shri Premchand S/o Raituh, General Mazdoor of Ambara colliery from services w.e.f. 21-6-96 is legal and proper.
- (2) Workman is not entitled to any relief.

नई दिल्ली, 11 अगस्त, 2017

का.आ. 1939.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एफसीआई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, चंडीगढ़ के पंचाट (संदर्भ सं. 43/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03.08.2017 को प्राप्त हुआ था।

[सं. एल-22011/15/2015-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 11th August, 2017

S.O. 1939.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 43/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Chandigarh as shown in the Annexure, in the Industrial Dispute between the management of FCI and their workmen, received by the Central Government on 03.08.2017.

[No. L-22011/15/2015-IR (CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present : Sri Kewal Krishan, Presiding Officer

Case No. 43/2015

Registered on 16.10.2015

General Secretary, FCI Handling Workers Union, 8651,
Arakshan road, Pahar Ganj, New Delhi-110055

...Applicant

Versus

1. The Area Manager, FCI, Distt. Office, 812, Amaltash Avenue,
Bajrang Bhawan, Delhim Road, Rohtak-124001, Haryana
2. The Area Manager, FCI, Distt. Faridabad,
National Highway-2, Faridabad, Haryana-121002
3. General Manager(Region), FCI, Regional Office,
Haryana, Bay No.29-34, Sector-4, Panchkula,
Haryana-134112

...Respondents

APPEARANCES :

For the workman	-	Ex parte
For the Management	-	Sh. K.K. Gupta, Adv.

AWARD

Passed on : 22.06.2017

Vide Order No.L-22011/15/2015-IR(CM-II), dated 30.09.2015, the Central Government in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Disputes Act, 1947 (in short Act) has referred the following industrial dispute for adjudication to this Tribunal.

“Whether the action of the management of Food Corporation of India in transferring the services of 3 Gangs (Gang No.3, 4 & 5)from FCI, FSD Faridabad to Rohtak is legal and justified? If not, what relief the workman is entitled to and from which date?”

Notice was given to the workmen-Union as well as to the management. Sh. K.K. Gupta appeared on behalf of the management but workmen-union were proceeded against ex parte.

Since the workman was proceeded against ex parte, no statement of claim was filed.

In the circumstances, it cannot be said that the action of the respondent-management in transferring the services of 3 Gangs from Faridabad to Rohtak is illegal and unjustified and the workmen-union is not entitled to any relief and the reference is answered accordingly.

KEWAL KRISHAN, Presiding Officer

नई दिल्ली, 14 अगस्त, 2017

का.आ. 1940.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स आईएसएस एसडीबी सिक्यूरिटी सर्विसेज प्रा. लि. एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 5/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.08.2017 को प्राप्त हुआ था।

[सं. एल-30011/36/2016-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 14th August, 2017

S.O. 1940.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 5/2017) of the Central Government Industrial Tribunal/Labour Court, Jaipur now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. I.S.S. S.D.B. Security Services Pvt. Ltd. and Other and their workman, which was received by the Central Government on 09.08.2017.

[No. L-30011/36/2016-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JAIPUR

BHARAT PANDEY, Presiding Officer

I.D. 5/2017

Reference No. L- 30011/36/2016-IR (M) Dated: 13.2.2017

The Secretary
Cairn Energy Workers Union
Vill: Aadel, Tehsil- Gudamalani,
Barmer (Rajasthan)- 344031.

V/S

1. The Joint General Manager
M/s I.S.S.S.D.B. Security Services Pvt. Ltd.,
No. 47th Avenue, Harangtan Road,
Chetpait, Chennai- 600031.
2. The Chief Executive Officer
M/s Cairn India Limited,
3&4 Floor, Vipul Plaza,
Sun City, Sector-54, Gurgaon,
Haryana- 122002.

AWARD

16.6.2017

1. The Central Government in exercise of the powers conferred under clause (d) of Sub Section 1 & 2 (A) of Section 10 of the Industrial Disputes Act 1947 has referred the following Industrial dispute to this tribunal for adjudication:-

“क्या प्रबंधन मैर्सेस आईएसएस एसडीबी सिक्युरिटी सर्विसेज प्रा० लि० चैनर्स के द्वारा केरन एनर्जी सुरक्षा कर्मी यूनियन आडेल बाडमेर की संलग्न मांग संख्या 1, 4 एवं 9 की पालना ना किये जाना न्यायोचित एवं न्यायसंगत है? यदि नहीं तो यूनियन/ कर्मकार किस अनुतोष को पाने का अधिकारी हैं?”

2. Pursuant to the receipt of the reference order, registered notices were issued to both the parties as per the order of the tribunal dated 28.2.2017 fixing 28.3.2017 for filing statement of claim. On 28.3.2017 Sh. Surendra Singh Rathore, Deputy Regional Manager, M/s I.S.S.S.D.B. Security Services Pvt Ltd Chennai, appeared on behalf of opposite party no.1 The Joint General Manager, M/s I.S.S.S.D.B. Security Services Pvt Ltd Chennai. None appeared on behalf of petitioner & opposite party no.2 The Chief Executive Officer, M/s Cairn India Limited, Gurgaon, Haryana. Registered notice sent against opposite party no.2 The Chief Executive Officer, M/s Cairn India Limited, Gurgaon, Haryana returned with note of the post office dated 20.3.2017 that addressee has left the Place of address. Service against applicant, The Secretary, Cairn Energy Workers Union, Barmer (Rajasthan) was held sufficient because registered notice sent against applicant did not return back. Authority of representation was filed on behalf of The Joint General Manager, M/s I.S.S.S.D.B. Security Services Pvt Ltd Chennai, which was kept on record. Case was adjourned in the interest of justice fixing 27.4.2017 for filing statement of claim by applicant with further direction that applicant should provide the new address of the Chief Executive Officer so that fresh notices may be sent.

3. On 27.4.2017 Presiding Officer was on leave. None appeared on behalf of applicant. Sh. Surendra Singh Rathore, Deputy Regional Manager, M/s I.S.S.S.D.B. Security Services Pvt Ltd Chennai, appeared on behalf of opposite party no.1. Next date 15.6.2017 was fixed for filing statement of claim.

4. On 15.6.17 also none appeared on behalf of applicant. Opposite party no.2 The Chief Executive Officer, M/s Cairn India Limited, Gurgaon, Haryana, remained unserved due to non-availability of fresh address of opposite party no.2 which was to be provided by applicant. Sh. Surendra Singh Rathore Deputy Regional Manager alleged that no one will be appearing on behalf of applicant because contract between M/s I.S.S.S.D.B. Security Services Pvt Ltd Chennai & M/s Cairn India Limited, Gurgaon, Haryana has ended & some other security agency has been provided contract for supply of security services to M/s Cairn India Limited, Gurgaon, Haryana. He has further alleged that the employees who have pressed the present demand through reference dated 13.2.2017 in the present case have become the employee of newly engaged firm for providing security services to M/s Cairn India Limited, Gurgaon, Haryana.

5. Whatever may be the reason for applicant not turning up for filing statement of claim, it is a fact on record that consecutively applicant has been provided three opportunity on different dates between 28.3.17 to 15.6.17 & despite service of notice they have not appeared to file statement of claim which is an indication that applicant is not interested in continuing the case further. In above fact & circumstance, further opportunity for filing statement of claim by applicant was closed by ending the further proceeding & reserving the case for award.

6. It is pertinent to note that on 13.2.2017 reference order was sent by Ministry to applicant with direction to file statement of claim within 15 days from the date of receipt of reference. Applicant has neither filed statement of claim on the direction of Ministry nor on the knowledge of the proceeding pending before this tribunal. It appears that applicant is not interested & willing in submitting the claim for adjudication. In the circumstances & in the absence of claim along with material evidence brought on record, tribunal is unable to record the finding on merit on the issues referred to it for adjudication. Accordingly, “No Claim Award” is passed in this matter. The reference under adjudication is answered accordingly.

7. Award as above.

BHARAT PANDEY, Presiding Officer

नई दिल्ली, 14 अगस्त, 2017

का.आ. 1941.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स भारतीय जीवन बीमा निगम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बैंगलूर के पंचाट (संदर्भ संख्या 26/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.08.2017 को प्राप्त हुआ था।

[सं. एल-17012/30/2014-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 14th August, 2017

S.O. 1941.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 26/2014) of the Central Government Industrial Tribunal/Labour Court, Bangalore now as shown in the Annexure, in the industrial dispute between the employers in relation to the

management of M/s. Life Insurance Corporation of India and their workman, which was received by the Central Government on 11.08.2017.

[No. L-17012/30/2014-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

DATED : 04th AUGUST, 2017

PRESENT : Shri V. S. RAVI, Presiding Officer

C.R. No. 26/2014

I Party

Sh. A.H. Kademani,
C/o Sh. D.K. Ramachandrappa,
Development Officer, LIC of India,
Branch III, Lamingtoan Road,
Kalburgi Mansion,
Hubli

Advocate for I Party:
Mr. R.B. Hebbal

II Party

The Divisional Manager,
LIC of India, Division II,
Divisional Office,
Belgaum

Advocates for II Party:
Mr. V.A. Byatnal

AWARD

1. The Central Government vide Order No.L-17012/30/2014-IR(M) dated 08.07.2014 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

SCHEDULE

**“Whether the management of LIC of India is justified in removing Sri. A. H. Kademani from the service?
If not, to what relief the workman is entitled to?”**

2. The I Party prays in the claim statement as follows:-

The I Party has served as Development Officer with salary roll no. 552767, and Development Officer No. 19163, of the II Party Corporation working at Nesaragi tq. Bailhongal, District Belgaum under the control of II Party before he has been removed from service. Further, the I Party prays this Court,

- a) To issue an Award, and set aside the order of the II Party/Respondent dated 01.01.1999 the Senior Divisional Manager & Disciplinary Authority at Annexure-E and consequently, quash the order dated 03.07.2002 of Zonal Manager & Appellate Authority at Annexure-H and quash the letter dated 18.07.2013 of Chief (Personal and Employee Relations) intimating the order of Chairman & reviewing Authority at Annexure-N.
- b) To restore the service of I Party with continuity of service and all consequential service benefits.
- c) To grant damages and compensation quantified at Rs. 1 crore for the injury, loss and sufferings.
- d) Any other relief, direction or order in the interest of justice and equity may kindly be issued.

3. Further, the II Party in the counter statement admits that, the I Party has been appointed as Development Officer at Nesaragi tq. Bailhongal District Belgaum and the I Party has been appointed as a Probationary Development Officer w.e.f 01.04.1991 with salary roll no. 552767, and Development Officer No. 19163 and posted to Nesaragi as head quarter under jurisdiction of our Bailhongal Branch Office. However, the II Party has stated in the counter statement that, this Court has no jurisdiction to try and entertain the present reference, as the I Party is not a workman as enumerated in the section 2(s) of the Industrial Dispute Act. Therefore, the II Party respectfully prayed that, claims made on I Party are not sustainable before this Court.

4. In the above mentioned facts and circumstances, an important and preliminary point arises for consideration, with regard to the above mentioned matter as follows:- “Whether the I party, development officer of LIC of India, is not a workman under section 2(s) the provisions of Industrial Disputes Act, and consequently, this Tribunal lacks jurisdiction to try the above said matter?”

5. **Point :-** In the claim statement, the I party has categorically admitted that he has served as Development Officer of LIC of India. Further, the I party has requested to set aside the orders of Removal from service passed by the II

party and also requested to direct the II party to reinstate I party, with cost. However, the Counsel for II Party has straight away drawn the attention of the Court to the Judgment passed by the Hon'ble Supreme Court of India, Civil Appellate Jurisdiction, Civil Appeal No's. 6547-6549 of 2010 dated 11th March, 2015, by Hon'ble Mr.Justice Dipak Misra and Hon'ble Mr. Justice, Prafulla C. Pant, in the case of Chauharya Tripathi & Ors Vs LIC of India & Ors, wherein it is clearly held as follows:- "In these appeals, the seminal question that emerges for consideration is whether the High Court of Allahabad in Miscellaneous Writ Petition No.21164 of 1998 has justifiably overturned the award passed by the Central Government Industrial Tribunal-cum-labour Court, Kanpur (for short, the Tribunal) on the singular foundation that the aggrieved persons, at whose instance a reference was made under Sections 10(1) and 2(a) of the Industrial Disputes Act, 1947 (for brevity, 'the Act'), was not adjudicable by the Tribunal, for the aggrieved persons were working as Development Officers in the Life Insurance Corporation (LIC) and, therefore, the Labour Court had no jurisdiction to deal with the lis in question." Further, it is also specifically held at para 17 of page 16 as follows:- "In view of the aforesaid analysis, we conclude and hold that the Development Officers working in the LIC are not the Workmen under Section 2(s) of the Act and accordingly we do not find any flaw in the judgment rendered by the High Court." In the present matter also, it is clear that, the I party, who has served as Development Officer in the LIC is not a workman under Section 2(s) of ID Act and consequently, the present Tribunal lacks the jurisdiction to entertain the issues raised by the I party.

6. Further, it is found that the above mentioned judgement of the Hon'ble Supreme Court is squarely applicable to the present case and the I party is unable to disprove the same, though sufficient and adequate opportunities have been granted to the I party, about the said judgement, passed by the Hon'ble Supreme Court. Further, this Tribunal is not expressing any opinion on the various other issues raised by both the parties. In the above mentioned facts and circumstances, this Tribunal is of the opinion that, the present Tribunal clearly lacks the jurisdiction to entertain the present matter of this nature. Further, it is open to the I party to urge all the contentions before the proper, competent and appropriate Judicial Forum/ Tribunal/ Court and also keeping open the same, it is seen that, the present matter has to be disposed off on the limited ground of jurisdiction point alone.

7. Further, based upon the above mentioned Hon'ble Supreme Court Judgement dated 11.03.2015 and also taking into consideration the points and principles laid down by the Lordships of the Hon'ble Supreme Court, this Tribunal has no other alternative, except to follow the judgement of the Hon'ble Supreme Court dated 11.03.2015. wherein, it is held that this Tribunal has no jurisdiction to entertain the grievances of the I party, namely, Development Officer of the LIC and therefore, the I party cannot seek the protections and also reliefs, under the provisions of ID Act. At the same time, this Tribunal is not expressing any opinion on other issues raised by both sides, as this Tribunal lacks jurisdiction to entertain the present matter of this nature and also liberty is granted to the I party to raise the dispute before the proper competent and appropriate Judicial Forum/Tribunal/Court within 30 days from the date of receipt of the present Award passed by this Tribunal in the best interest of justice, equity, and fair play, and the matter has to be disposed of. Accordingly, this point is answered. Hence the following Award is passed:-

AWARD

This Tribunal under the provisions of Industrial Disputes Act has no jurisdiction to entertain the dispute raised by the I party, namely, Development Officer of LIC of India, particularly, in the light of the judgement passed by the Hon'ble Supreme Court in Civil Appeal Nos. 6547-6549 of 2010 dated 11th March, 2015 by Hon'ble Justice Sh Dipak Misra and Mr.Justice. Prafulla C. Pant, and the present matter suffers for want of jurisdiction before this Tribunal and liberty is given to the I party to raise the dispute before the proper, competent and appropriate Judicial Forum/ Tribunal/Court, within 30 days from the date of receipt of the present Award, by adopting the procedure known under the law, in the best interest of justice, equity, good conscience and fair play and this Tribunal has not expressed any opinion regarding the various other issues raised by both the parties, as the present matter has been disposed of, on the limited ground of jurisdiction point alone, and also, without costs, for the above mentioned facts and circumstances.

(Dictated, transcribed, corrected and signed by me on 4th August, 2017)

V. S. RAVI, Presiding Officer

नई दिल्ली, 14 अगस्त, 2017

का.आ. 1942.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स स्टैंडर्ड मर्केटाइल कंपनी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, धनबाद के पंचाट (संदर्भ संख्या 180/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.08.2017 को प्राप्त हुआ था।

[सं. एल-29012/65/1997-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 14th August, 2017

S.O. 1942.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 180/1997) of the Central Government Industrial Tribunal/Labour Court-1, Dhanbad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Standard Mercantile Company and their workman, which was received by the Central Government on 09.08.2017.

[No. L-29012/65/1997-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 180/1997

Employer in relation to the management of Standard Mercantile Company

AND

Their workman

Present : Shri R.K. Saran, Presiding Officer

Appearances :

For the Employers : None

For the workman : None

State : Jharkhand

Industry :

Dated : 26/07/2017

AWARD

By order No. L-29012/65/97-IR(M) dated 27/10/1997, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

“Whether the action of Standard Mercantile Company in dismissing the services of Shri Nimai saha and six others are justified? If not, to what relief they are entitled to?”

Note :- List of workmen is not enclosed alongwith order of reference.

2. After receipt of the reference, both parties are noticed. But none appears on behalf of the Workman as well as management. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 14 अगस्त, 2017

का.आ. 1943.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स हिन्दुस्तान कॉपर लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, धनबाद के पंचाट (संदर्भ संख्या 40/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.08.2017 को प्राप्त हुआ था।

[सं. एल-42024/1/2012-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 14th August, 2017

S.O. 1943.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 40/2012) of the Central Government Industrial Tribunal/Labour Court-1, Dhanbad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Hindustan Copper Limited and their workman, which was received by the Central Government on 09.08.2017.

[No. L-42024/1/2012-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 40/2012

Employer in relation to the management of Hindustan Copper Limited, Mosabani

AND

Their workman

Present : Shri R.K. Saran, Presiding Officer

Appearances :

For the Employers : Sri D.K. Verma, Advocate

For the workman : None

State : Jharkhand

Industry : Copper

Dated : 28/07/2017

AWARD

By order No. L-42024/1/2012-IR(M) dated 25/06/2012, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal

SCHEDULE

“Whether the action of the Management of Hindustan Copper Limited, Mosabani Group of Mines in not paying the wage and statutory dues to the VRS employees Shri B.K. Besra and others as per enclosed list against the closure of Mosabani Group of Mines (in accordance with the wage revision settlement, effective from 01/11/1997) is legal and justified ? What relief the workmen are entitled to?

Note:-List of workman is not enclosed alongwith order of reference

2. After receipt of the reference, both parties are noticed. But none appears on behalf of the sponsoring Union/workman. Management is present. Case remains pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 14 अगस्त, 2017

का.आ. 1944.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इण्डियन ऑयल कार्पोरेशन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय-1, धनबाद के पंचाट (संरक्ष संख्या 75/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.08.2017 को प्राप्त हुआ था।

[सं. एल-30012/18/1998-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 14th August, 2017

S.O. 1944.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 75/1999) of the Central Government Industrial Tribunal/Labour Court-1, Dhanbad now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Indian Oil Corporation and their workman, which was received by the Central Government on 09.08.2017.

[No. L-30012/18/1998-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 75 of 1999

Employer in relation to the management of Indian Oil Corporation, Barauni

AND

Their workman

Present : Shri R.K. Saran, Presiding Officer**Appearances :**

For the Employers : Shri Manas Bora, Chief General Manager

For the workman : Shri Prabendra Kumar, Rep.

State : Jharkhand

Industry : Oil

Dated : 28/07/2017

AWARD

By order No. L-30012 /18 /1998/IR (M) dt. 11.05.1999 the Central Government in the Ministry of Labour has, in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

“Whether the action of the management of Barauni Oil Refinery, Barauni in not fixing the pay of Shri R.P.Singh and Sri Mathura Rai as per clause 3.1.4 of long term settlement dated 11.10.94 is justified ? If not, to what relief the workman are entitled?”

2. This Case is received from the Ministry on 15.06.1999. After receipt of the reference, both parties are noticed. The Sponsoring Union files written statement on 06.12.99. During the pendency of the case Sponsoring Union representative admitted that virtually no dispute at present therein between the workman and the management, to which management also agreed. Hence the case is settled, therefore Settlement award passed accordingly.

R. K. SARAN, Presiding Officer

नई दिल्ली, 14 अगस्त, 2017

का.आ. 1945.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स दिल्ली इंटरनेशनल एयरपोर्ट लिमिटेड एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, नई दिल्ली के पंचाट (संदर्भ संख्या 14/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.08.2017 को प्राप्त हुआ था।

[सं. एल-11011/3/2016-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 14th August, 2017

S.O. 1945.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 14/2016) of the Central Government Industrial Tribunal/Labour Court-2, New Delhi now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. Delhi International Airport Ltd. and others and their workman, which was received by the Central Government on 09.08.2017.

[No. L-11011/3/2016-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO. 2, KARKARDOOMA COURT COMPLEX, DELHI

I.D. NO. 14/2016

The General Secretary, Airport Employees Union,
BRT Bhawan, 13A Rouze Avenue,
New Delhi-110002

...Workman

Versus

1. The CMD, Delhi International Airport Ltd.,
New Udaan Bhawan T-3, IGI Airport,
New Delhi-110037.
2. The Chairman, Airport Authority of India,
Rajiv Gandhi Bhawan, Safdarjung Airport,
New Delhi-110003.
3. APM Air Cargo Terminal Services,
107, Transport Centre, Punjabi Bagh,
New Delhi-110035.
4. Sea Hawak Cargo Carries (P) Ltd.,
26 M Block, Greater Kailash Part-II,
New Delhi-110048

...Management

AWARD

In the present case, a reference was received from the appropriate Government vide letter No.L-11011/3/2016-IR(M) dated 29.03.2016 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Act, for adjudication of a dispute, terms of which are as under:

“Whether retirement of Shri Peer Mohammad w.e.f 01.01.14 can be construed as illegal termination that too without making payment of any retrial benefits by the management of APM Air Cargo termination services and is it just, fair and legal? If not what relief the workman concerned is entitled to?”

2. In the reference order, the appropriate Government commanded the party/ies raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Claimant union opted not to file his claim statement with the Tribunal.
3. On receipt of the above reference, notice was sent to the workman as well as the managements. Neither the postal article sent to the claimant, referred above, was received back nor was it observed by the Tribunal that postal services remained affected in the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.
4. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a ‘No Dispute/Claim’ award. Let this

award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Date: July 28, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 14 अगस्त, 2017

का.आ. 1946.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओ.एन.जी.सी. लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ संख्या 130/2016) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.08.2017 को प्राप्त हुआ था।

[सं. एल-30012/27/2008-आईआर (एम)]

राजेश कुमार, अवर सचिव

New Delhi, the 14th August, 2017

S.O. 1946.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 130/2016) of the Central Government Industrial Tribunal/Labour Court-2, New Delhi now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of M/s. O.N.G.C. Ltd. and their workman, which was received by the Central Government on 11.08.2017.

[No. L-30012/27/2008-IR (M)]

RAJESH KUMAR, Under Secy.

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI

ID No. 130/2016

Ms. Anjana Mittal W/o Shri Ajit Kumar Mittal,
114, FS Punjabi Bagh,
Apartment Rohtak Road,
New Delhi

...Workman

Versus

The Director (Personnel),
ONGC Ltd. Tel Bhawan
Dehradun

...Management

AWARD

Consequent upon receipt of reference from Ministry of Labour by Central Government Industrial Tribunal-cum-Labour Court No.II, New Delhi vide letter No. L-30012/27/2008-IR(M) dated 22.10.2008 under clause (d) of sub-section (1) and sub-section 2-A of Section 10 of the Industrial Disputes Act, 1947(in short the Act), the Tribunal was required to adjudicate an industrial dispute, terms of which are as under:

‘Whether the action of the management of ONGC, Dehradun, to terminate the services of Mrs. Anjana Mittal, AG-II, with effect from 01.12.1993 is legal and justified? To what relief the workman is entitled?’

2. Background facts, necessary for answering the reference as set out in the statement of claim are that Ms. Anjana Mittal, the claimant herein, was appointed against regular sanctioned post of Assistant Grade III by Oil and Natural Gas Commission, the management, on 12.05.1983 after undergoing selection process. Thereafter, she completed one year probation successfully as is evident from Annexure I and II annexed with the statement of claim. Since the claimant was satisfactorily performing her duties assigned to her, as such, she was promoted to the substantive post of Assistant Grade II on 06.01.1990 from Assistant Grade III to Assistant Grade II as is clear from Annexure IV.

3. It is the case of the claimant that though in the initial appointment letter dated 12.05.1983, her post is stated to be temporary, but the claimant cannot be termed as a temporary employee after completion of uninterrupted service of

11 years. She is already on substantive post since 15.01.1986 and her claim is supported by office memorandum dated 15.01.1986 which clarifies continuous service on the temporary post for more than three years would culminate into permanent post. Claimant has thereafter filed accommodation form, CPF form, nomination form, family pension scheme form, Gratuity form, benevolent fund form etc which also shows that she was a permanent employee and her services should not have been terminated under Regulation 24 (1) of ONGC (Terms and Conditions and Service Regulations 1975, treating her to be purely temporary employee.

4. It is also the case of the claimant that after being appointed to the post of Assistant Grade III on 13.5.1983, she worked diligently and satisfactorily. Claimant belongs to Sikh family and after marriage, she had to make lots of adjustments in her marriage due to different social and cultural background of both families,. In the year 1987-88, claimant fell ill and faced lot of medical problems and had to remain on medical leave from time to time, which was duly approved by doctors of the management. Claimant gave birth to a girl child on 20.07.1986 but the said child unfortunately did not survive. Claimant joined duties after three months of maternity leave. In her statement of claim, the claimant has made reference to the various ailments from which she was suffering. She again conceived and was blessed with a baby girl in 1989. Again she availed maternity leave which was duly sanctioned. In 1990 she conceived for the third time and she developed medical complications and problems due to which she had to proceed on medical leave. Claimant suffered from major health problems due to surgical operations at Delhi and had gall bladder of the claimant was removed. Later on, there was stone in the bile duct and another surgery was performed by the doctors of Sir Ganga Ram Hospital. She was suffering from body pain and swelling in the body. It is further alleged that on 08.09.1991 her mother in law expired. Claimant had to handle her daughters also.

5. It is alleged in para 16 of the claim that on 09.10.1992 claimant went to join duties, but she was not allowed to join. She made a reference on 12.10.1992 for joining duties with the management. She explained her problems to the management and after having been convinced , the management allowed her to join duties vide approval dated 14.10.1992. Her leave was also (being) sanctioned. In spite of this, Claimant was directed to appear before Medical Board comprising of three Doctors, Dr. A.S. Anand ACMO, Dr. KCS Rawat DCMO and Dr. (Mrs.) M.L. Kala, SMO (Eye Specialist) for examination. All these Doctors were physicians. This Board, in fact, was constituted in complete contravention of rules of ONGC Rules 1965. Claimant had remained on medical leave from 01.12.1993 to 30.12.1993 and she had to again proceed on leave from 31.01.1994 to 25.02.1994 and she submitted applications duly supported by medical certificates. However, claimant was informed that her leave has not been sanctioned and she was asked to join duties from 28.02.1994. It was on 27.05.1994 that show cause notice was served upon the claimant in her office. Later on also another show-cause notice dated 20.06.1994 was served repeating the same allegations as is clear from Annexure XV. Claimant during this period was not allowed to sign the attendance register and this fact was brought to the notice of the management vide letter dated 28.06.1994 and it was on 17.06.1994 that the claimant was given work or dairy and dispatch. However, all the initials of the claimant were obliterated on the diary by cross marks. Not only this, one official Shri M.R. Sachdeva, the then General Manager also manhandled the claimant and misbehaved with her. However, no action was taken against him. Report dated 11.12.1992 of the panel of Doctors was never communicated to the claimant. It was only on the issuance of the show-cause notice on 26.05.1994 that the claimant came to know about the adverse report of the Medical Board. Claimant submitted detailed reply to the show cause notice and management without considering the same and without application of mind, terminated her services vide order dated 01.07.1994 with retrospective effect from 01.12.1993 , completely in violation of all norms, terms and conditions of employment as well as principles of natural justice. Thereafter, claimant has also filed appeal against the decision, which was also rejected as is clear from letter dated 16/21.02.1995 issued by the management. Claimant has also made reference to the civil writ petition filed by her before the Hon'ble High Court of Allahabad as well as subsequent writ petition filed before the Hon'ble High Court of Nainital. The said order was further challenged by writ appear bearing No.55/2005 and thereafter the Division Bench finally disposed of the matter on 29.06.2006 wherein it was held that the claimant is a workman and the present dispute was amenable to the jurisdiction of the industrial adjudicator. As a result of this, the present dispute was raised by way of reference by the claimant wherein claimant has challenged her termination and prayed for reinstatement with back wages as her termination is in violation of Section 25-F as well as G, H and N of the Act.

6. Claim was contested by the management who filed reply to the statement of claim in which is it clearly averred that the claimant was appointed on the post of Assistant Grade III on 13.05.1983 vide appointment letter bearing No.GEOL.4(57)/79-E-I dated 12.05.1983. The post was on temporary basis and was liable to be terminated at any time by one months notice from either side as per clause 2(i) of the Regulations. In para 6 there is reference to the period during which the claimant remained absent, which is as under:

<u>Year</u>	<u>No of days of absence</u>
1987	277
1988	323

1989	268
1990	339
1991	214
1992	274
1993	273

7. It is also alleged that during the year 1991, claimant was transferred to ONGC Hospital and she continued to apply for leave several times and also remained absent without prior permission. She was not, in fact, found suitable for the job at the hospital. There is also reference to the writ petition filed by the claimant earlier before Hon'ble High Court of Allahabad and Hon'ble High Court of Nainital, which is not in dispute.

8. Entire emphasis in the written statement filed by the management is upon the fact that her post is temporary and she with her free mind had accepted all the terms and conditions of employment and thus she is governed by the extant rules/regulations of the management at that point of time. Case of the claimant is not covered under the guidelines dated 07.07.1995 as her services were terminated from 10.12.1993 whereas guidelines are applicable only from 07.07.1995. It is also alleged that during the first three years from 1983 to 1986, claimant worked properly but after her marriage on 14.12.1987 she started absenting herself from duties for more than 200 days – from 1987 till her termination. Management has denied the other material averments contained in the statement of claim. It is further alleged that the average absence days of the claimant during the years prior to her termination comes to 284, i.e. an average of 77.97% in a year.

9. Claimant filed rejoinder to the written statement filed by the management and reasserted the stand taken in the statement of claim and denied the material allegations contained in the written statement of the management. Management has, further, filed counter reply to the rejoinder filed by the claimant. The same appears to have been filed without mentioning the provisions of law nor any permission appears to have been sought by the management for filing counter reply to the rejoinder filed by the claimant.

10. It is necessary to mention here that my learned predecessor vide order dated 11.01.2011 had not framed any issues as the Tribunal was of the opinion that no other issue except the one referred for adjudication in the matter arises for consideration.

11. Claimant, in order to prove her case, examined herself as WW1, Shri Badri Nath Vasandi as WW2, and Shri A.K. Mittal as WW1 and these witness relied on various documents. Management in order to rebut the case of the claimant examined Dr. S.P. Mandal, as MW1, Dr. Abha Mazumdar as MW2 and Shri Vikram Malhotra as MW3 and certain documents were relied upon by them.

12. I have heard Ms. Meena Chaudhary Sharma, A/R for the claimant and Shri A.N. Mehrotra, A/R for the management.

13. Ms. Meena Chaudhary Sharma, learned authorized representative appearing on behalf of the claimant strongly urged that in the present case management has passed order of termination with retrospective effect Ex.WW1/8 which is totally in violation of the Regulations as well as principles of natural justice. The order of termination has been passed by an official not competent to issue the same and the claimant was initially appointed by Group General Manager whereas letter of termination would clearly show that the Col.S.K. Wahi is simply a General Manager (A.D.M.), as such, was not competent to pass this order. Even otherwise, it was urged that the said order is in violation of principles of natural justice as well as provisions of Section 25-F of the Act. Learned A/R for the claimant took pains to take the court through the voluminous evidence on record so as to suggest that absence of the claimant was not at all unauthorized but it was on account of severe ailments from which she was suffering and she has submitted medical proof of the same from time to time. Learned A/R for the claimant also submitted that absence of the claimant cannot be treated to be unauthorized when later on the same was regularized by the competent authority.

14. Secondly, it was strongly urged on behalf of the claimant that order of termination has been passed with retrospective effect on 01.07.1994 with effect from 01.12.1993 and this can only be done in cases which are of deemed suspension. Moreover, the claimant was on duty during the said period, and as such there is no question of termination of her services with retrospective effect. It was also pointed out that the claimant successfully completed her probation on 01.01.1991, which clearly shows that she was performing her duties sincerely and diligently. Major part of the leave of the claimant, in the contention of the learned A/R for the claimant, was on medical grounds as she was referred for medical treatment by ONGC at Delhi, Dehradun etc. She has also filed certificate in this regard.

15. Learned A/R for the claimant also invited attention of the court to the evidence of the claimant as well as that of Dr. Mazumdar, who has issued certificate in favour of the claimant from 25.03.1992 to 26.03.1992 as well as in the

year 1990 also. She has clarified that the claimant was suffering from pain after pregnancy as well as spondylitis after delivery of her child and this disease was diagnosed by Gastroenterologist. Lastly, learned A/R for the claimant drew the attention of the Tribunal to the testimony of Shri Vikram Malhotra, Deputy General Manager who has given evasive reply to most of the pertinent questions put to him during the course of cross examination. He is also not aware of the rules and regulations governing conditions of service of the claimant and permanent employees. Learned A/R for the claimant relied upon a number of authorities in support of her submissions and I would be referring to the same while drawing my conclusion.

16. Per contra, Shri A.N. Mehrotra, A/R for the management controverted the submissions raised on behalf of the claimant by urging that the claimant remained unauthorisedly absent for very long periods. In para 6 of the written statement as well as para 14 of the affidavit of Shri Vikram Malhotra, it is clearly stated that the average absence days for the last seven years prior to her termination comes to 284 days, which is approximately 77.97% per year. It was also urged that most of the time claimants remained absent unauthorisedly. No leave was sanctioned in favour of the claimant. In most of the cases, ex-post facto leave was sanctioned.

17. Secondly, it was urged that as per terms and conditions of appointment, which is clear from the letter of appointment, service of the claimant can be terminated at any time by one month's notice to be given by either side, viz. appointee or the appointing authority without assigning any reasons by the competent authority. The appointing authority, however, reserves the right of terminating the services of the appointee without notice or before expiration of the stipulated period of notice by making payment of a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof. Since she was terminated vide letter of termination Ex.WW1/8 and as per clause (ii) of the letter of appointment, there is no violation of any rules or regulations or provisions of the Act. Learned A/R for the management also relied upon some authorities and I would also refer to the same while discussing the comparative merits of the arguments and drawing my conclusion.

18. Before I proceed to consider the comparative merits of the submissions raised by either of the parties, it is necessary to refer to the facts germane to the controversy and having bearing on the merits of the case. It is clear from memorandum dated 12.05.1983 Ex.WW1/1 that the claimant herein was given offer of employment as she was selected for temporary post of Assistant Grade III with the management at an initial pay of Rs.370.00 per month, coupled with other allowances. Clause (i) and (ii) of the said memorandum reads as under:

- (i) The post is temporary
- (ii) the appointment may be terminated at any time by one month's notice to be given by either side, viz. appointee or the appointing authority, without assigning any reasons. The appointing authority, however, reserves the right of terminating the services of the appointee without notice or before expiration of the stipulated period of notice by making payment of a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof

19. It is also clear from perusal of the letter Ex.WW1/1 that she has to supply medical fitness certificate, character certificate etc. as desired by the management. Thereafter, claimant has joined services of the management on 13.05.1983. During the course of arguments, it was not disputed that the claimant has successfully completed period of probation of one year diligently and satisfactorily without any complaint from any superior and this fact has been duly confirmed by letter dated 06.06.1984 Ex.WW1/5.

20. Evidence on record further shows that the claimant herein was given promotion to the post of Assistant Grade II in temporary capacity on 01.01.1990 till further orders. As per this letter, she was again on probation for a period of one year from the date of assumption of charge on the post of Assistant Grade II. During the course of arguments, it was fairly conceded on behalf of the management that during this period, there was no complaint from any superior regarding her style and mode of working. There is another office memorandum Ex.WW1/7 which clarifies that decision has been taken by the apex body of the management whereby officials of temporary post for three years to be made permanent. Further office memorandum Ex.WW1/8 also clarifies that employees who have completed three years of regular service and who have satisfactorily completed probation period will be given following advantages which are applicable to permanent employees:

- (a) They will not be retrenched so long as any temporary employee is in service in the event of reduction of establishment. If at any time reductions in sanctioned strength take place, the principle of 'last come first go' will be observed within the discipline and in respect of decentralized category within the region.
- (b) They will be eligible for the grant of house building advance as other permanent employees, and
- (c) the pay of such an employee with more than three years of service will be treated as substantive pay for the purpose of Regulation 7(v) of the ONGC (Pay and Allowances) Regulations, 1972.

21. Letter Ex.WW1/9 dated 09.02.1994 also reiterates the above decision and clarifies that there is no practice for declaring an employee as permanent in the Corporation but the facilities of those employees who have completed three years of service and have fulfilled other codal formalities , including medical examination etc. are eligible to all facilities provided to permanent employees. Shri Vikram Malhotra, MW3, during his cross examination could not specify the number of permanent posts which have been declared under the Regulation to be permanent nor was he clear about the status of the claimant who are temporary or permanent under the said Regulation.

22. Management as well as claimant have filed general guidelines Ex.WW1/14 relating to cases of prolonged unauthorized absence of the employee. This clearly provides that absence of an employee from duty without prior request for sanction of leave constitutes unauthorized absence. However, it is clear in the said instructions that if the said leave has been sanctioned later on, that would not mean unauthorized absence and the employer is to keep in mind the genuine compelling reasons while considering the question of unauthorized absence of an employee. At this stage, it is appropriate to refer to the evidence as well as the stand taken by the management in its pleadings. During the course of arguments it was not denied by the management and this fact has been duly admitted otherwise in the written statement as well as in the affidavit of MW3 that the so called unauthorized absence of the claimant was later on regularized/sanctioned by the management.

23. Now, the only question which survives for consideration is whether unauthorized absence of 1½ months from 03.01.1994 to 25.02.2014 and from 02.03.1994 till date of the claimant is legal and justified or in violation of the law and whether it warrants punishment of termination on the claimant who has served for almost 11 years with the management. In this regard, it is clear from the affidavit of the claimant, which is almost repetition of the statement of claim filed by the claimant. Entire focus of the above affidavit is on the ailment from which the claimant was suffering and in para 18 of the affidavit, she has specifically mentioned that she was on medical leave from 01.12.1993 to 31.12.1993 and again from 03.01.1994 to 25.02.1994. Copies of the application moved by the claimant to the management are also held on record and management has also given reply to some of the applications, which are from Ex.WW1/15 to Ex.WW1/112. There is no need to even refer to these medical certificates and applications moved by the claimant has the management, in its pleadings as well as MW3 in his cross examination has admitted that all her leaves except the leave for the last 1 ½ months were regularized by the management. This clearly shows that the management has found bonafide reasons for regularizing the medical or other leaves of the claimant and submissions made by the A/R for the management that during her entire career, she has remained on leave for 284 days in a year in an unauthorized manner is totally meritless and is, hereby, rejected. Even Shri Vikram Malhotra MW3 in his cross examination as admitted as under:

‘Total leave prior to her promotion ws duly sanctioned. It is correct that after the claimant was promoted till 30.11.1993 all the leaves of the claimant were approved and duly sanction. It was post facto.’

24. It is also appropriate to mention here that the claimant has admittedly been given promotion from Assistant Grade III to Assistant Grade II vide letter dated 06.01.1990 and she has successfully completed her probation period as discussed above. No memo was issued at any time to the claimant regarding her mode and style of working. Rather, it is fairly admitted by the management in the written statement that initially the claimant was performing her duties satisfactorily with the management. Problem, in fact, arose only after the marriage of the claimant and when she gave birth to her children, resulting in various ailments from which the claimant started suffering.

25. Admittedly, in the present case no domestic enquiry or regular enquiry was conducted by the management against the claimant for the period of her unauthorized absence. A show cause notice vide memorandum dated 26.05.1994 Ex.MW3/6 was served on the claimant and relevant portion of the same is as under:

Smt. Anjana Mittal, Assistant Grade III, identification No.53872 was appointed to the post of Assistant Grade III on ONGC on 13.05.1983 and was subsequently promoted to the post of Assistant Grade II with effect from 01.01.1990.

2. For the last 5 years, it has been observed that she has been on leave on one pretext or the other and mostly on medical grounds, a glimpse of which since 1990 is given hereunder:

<u>Year</u>	<u>Leave</u>	<u>Grounds</u>
1990	244 days	EOL on medical grounds
1991	183 days	-do-
	021 days	-do- (HPL)

		204 days
1992	235 days	EOL on medical grounds
	030 days	EOL on medical grounds (HPL)
	004 days	EOL on medical grounds(commuted leave)
	274 days	
1993	013 days	EL on Medical grounds
	001 days	HPL EOL on medical grounds
	010 days	Commutted leave EOL on medical grounds
	247 days	EOL on medical grounds
	030 days	EOL on medical grounds(Leave not yet sanctioned)
	306 days	

3. Apart from the above, she has been absenting unauthorisedly during the period mentioned below and her request for grant of leave has not yet been accepted by the competent authority:

- A. 03.01.1994 to 25.02.1994 53 days
- B. 02.03.1994 till date

4. From the above, it is evident that she has not rendered any purposeful service to the organization and has been continuously shown an attitude of gross misconduct which is highly uncalled for and unbecoming of an employee.

5. Besides the above, she was also examined by a medical board on 11.12.1992, the findings of which are as below:

‘The period of leave in many of the medical certificates appears disproportionate to the nature and severity of ailments and therefore not entirely justified. The patient at the time of examination was not found to be suffering from any disease. It appears that the patient apart from having minor ailments from time to time had other domestic personal problems also to account for her prolonged leave.’

6. In view of the above, she is hereby asked to explain as to why action under Regulation 24 of ‘Terms and Conditions of appointment and Service Regulations 1975’ should not be taken against her.

24. Termination of Service

Except as may specifically be provided in the contract of service, the services of a temporary employee shall be liable to termination at any time without assigning any reasons by a notice in writing given either by the employee to the appointing authority or by the appointing authority to the employee and the period of such notice shall be one month.

Provided that the service of any such employee may be terminated forthwith and on such termination, the employee shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his service or as the case may be before the period by which such notice falls short of one month.’

Smt. Anjana Mittal, AG II is, therefore, directed to send her explanation, if any, which should reach this office within 15 days from the date of receipt of this memorandum by her, failing which action of proposed in para 6 above, may follow.’

26. Claimant herein has also filed reply to the above memorandum, which is Ex.MW3/7, and is clear from the same that she has mentioned about her genuine and unavoidable domestic problems as well as medical problems as a result of which she has to proceed on leaves. He made a specific reference to the fact that she was examined by a medical board when she was quite well and was on duty after issuance of fitness certificate by the doctors. As such, possibility/opinion of the doctor that she was not suffering from any disease on the date of examination can also not be denied. There is specific mention of the various ailments from which the claimant was suffering in her reply. She has also stated that she was never absent from duty and has moved due applications for sanction of the same. As such, she has denied the charge that she was absent from 03.01.1994 to 25.02.1994 and from 02.03.1994 till date.

27. It is pertinent to mention here that the findings rendered by the medical board were never communicated to the claimant and it was only later on when memorandum was served upon the claimant that she came to know about the adverse comments made by the medical board against her.

28. Neither enquiry officer was appointed by the management to prove the allegation contained in the above memorandum nor was the claimant afforded any opportunity to adduce any evidence in support and proof of the stand taken in her reply. Finally, claimant was served with order of termination dated 01.017.19943 Ex.W1/123 and the same reads as under:

‘In exercise of the powers conferred under Regulation 24(1) of the ONGC(Terms and Conditions of Appointment & Service) Regulations, 1975, the undersigned being the appointing authority, hereby considers it in the interest of the Corporation to terminate Smt. Anjana Devi Mittal, Assistant Grade II, ID NO.53872, ONGC Ltd., Dehradun from the service of the Corporation.

2. Accordingly Smt. Anjana Devi Mittal, Assistant Grade II, is hereby given one months’ salary in lieu of notice and her services are terminated with effect from 01.12.1993 (F/N). Her name shall accordingly be struck off from the roll of the Corporation with effect from 01.12.1993(F/N).

3. The Corporation reserves its right to recover any outstanding advances/loans due towards her, if any.

Encl: Cheque No.575141 dated 06.07.1994 for Rs.2749.00.’

29. There is no merit in the contention of the management that in terms of Regulation No.24, there is no requirement of holding any enquiry or serving one months notice. It is now trite law that when an establishment falls within the ambit of an ‘industry’ as defined in section 2(j) of the Act and the claimant falls within the definition of ‘workman’ as defined in section 2(s) of the Act, in such a situation management has to follow the procedure contained in the Act so as to terminate service of such workman. Not only this, action of the management must be in consonance with principles of natural justice which are integral part of administration of justice.

30. In this regard, I am fortified by the ratio of the case in Union of India vs. Tulsi Ram Patel (AIR (1985) SCC 1416), wherein it has been held as under:

‘The principles of natural justice have thus come to be recognized as being a part of the guarantee contained in Article 14 because of the new and dynamic interpretation given by this Court to the concept of equality which is the subject-matter of that Article. Shortly put, the syllogism runs thus : violation of a rule of natural justice results in arbitrariness which is the same as discrimination; where discrimination is the result of state action, it is a violation of Article 14; therefore, a violation of a principle of natural justice by a State action is a violation of Article 14. Article 14, however, is not the sole repository of the principles of natural justice. What it does is to guarantee that any law or State action violating them will be struck down. The principles of natural justice, however, apply not only to legislation and State action but also where any tribunal, authority or body men, not coming within the definition of “State” in Article 12, is charged with the duty of deciding a matter. In such a case, the principles of natural justice require that it must decide such matter fairly and impartially.’

31. In the present case, there was necessity to even adhere to the above principles inasmuch as the management has itself regularized the so called previous unauthorized leaves of the claimant herein by according ex post facto sanction.

32. Admittedly, the claimant has also filed appeal against the order passed by Col. S.K. Wahi, General Manager(Admn.) as is clear from Ex.WW1/125. She has also filed application/reminder for early disposal of her appeal vide Ex.WW1/126. The said appeal was dismissed by the Appellate Authority in a perfunctory manner without touching merits of the points raised by the claimant herein in her representation vide order Ex.MW3/8. A bare perusal of the said letter would show that in fact General Manager (Admn.) has not applied his mind and he has rejected his appeal in a perfunctory manner without going into the merits of the points raised in the representation. There is also nothing on record to show that personal hearing, much less a hearing, was afforded to the claimant before passing order of rejection of appeal vide Ex.MW3/8. In fact, the Appellate Authority. i.e. General Manager(Admn.) has not passed any order on the appeal filed by the claimant herein.

33. Learned A/R for the management could not satisfy this court as to how ex post facto order of termination/removal can be passed by the competent authority/ management when the claimant herein has admittedly gone to the office though she was not allowed to mark her attendance. This fact is proved from her own submission as well as statement of MW3. It is not out of place to mention here that that claimant herein was serving against a sanctioned regular post irrespective of the fact whether she was temporary or permanent and she has successfully completed her probation period twice, first when she was initially appointed on the post of Assistant Grade III and secondly when she was promoted to the post of Assistant Grade II. Since the claimant herein falls within the definition of ‘workman’ and management is an ‘industry’ has been held in Bangalore Water Supply and Sewerage Board Vs. A.

Rajappa 1978 (36) F.L.R. 266, as such when services of an employee who has served an organization of more than 11 years was to be dispensed with, the least which was expected from the management was to hold a regular enquiry/domestic enquiry by giving fair and due opportunity to the claimant to explain the reasons for her unauthorized absence of 1 ½ months. Even otherwise, even if the same period is held to be unauthorized, the so called punishment of termination is really very grave in nature. Since there is total flouting of norms and principles of natural justice as well as provisions of Section 25F of the Act inasmuch as no one months' notice nor months' salary in lieu of such notice was given to the claimant.

34. During the course of arguments, learned A/R for the claimant relied upon a number of authorities wherein provisions of section 25F as well as section 2(oo) of the Act have been discussed when the workman remained absent from duty. In management of Escort Ltd. Faridabad vs Kesar chand (2009) Lab.IC 1444, it was also a case of unauthorized absence of a workman for 10 days beyond sanctioned period of leave. His name was finally struck off from the rolls of the company. In Anoop Sharma Vs Executive Engineer (2010)SCC 5497, wherein it was held by the Hon'ble Apex Court that provisions of Section 25-F of the Act are mandatory in nature and non-compliance of clause (a) and (b) of Section 25-F of the Act would render most of the management to be totally illegal and void and retrenchment or termination of the employee would become nullity in the eyes of law in case there is non compliance of the provisions of the Act. Similar is the stand in a number of authorities relied by the claimant and there is no need to discuss these authorities as there is hardly any dispute with provisions of law propounded in the above authorities. This Tribunal is of the firm view that when service of an employee who has worked against regular and sanctioned post for the last several years is to be dispensed with on account of unauthorized absence, management is expected to conduct enquiry so as to ascertain the circumstances under which she remained absent and if the reasons given by the employee are genuine and she was stopped from joining duties on account of ailment and in that eventuality the same can be considered to be a justifiable reason and guidelines also provide that the management can always take a sympathetic view of the matter. The so called medical board constituted by the management is not of much help so as to ascertain the nature of the ailment of the claimant as there was no expert in the said board who could opine about the ailment of the claimant as one of the members on the board is an eye specialist and case of the claimant is not that she was suffering from any kind of ailment in the eyes.

35. I have gone through the ratio of the authority relied upon on behalf of the management in the case of National Aviation Company of India Ltd. Vs. S.M.K. Khan in Civil Appeal No.1622 of 2009 decided on 24.03.2009. A careful perusal of the judgement would show that it was a case of a security assistant whose services were continuously found to be unsatisfactory by the management. He was issued several warnings and minor punishments were given for insubordination, indiscipline, negligence, sleeping on duty etc. He was also charge sheeted on account of various misconducts and was demoted to the post of chowkidar. Even thereafter, there was no change in his style and functioning as a result of which he was given several reprimands and warnings. Later on when he attained the age of 55 years, his case was reviewed under Rule 12 of Indian Airlines Employees Service Regulation and he was satisfactorily retired from service. Workman ultimately challenged this action of the management. On representation made by the workman he was given a golden chance for one year as he had given full assurance to the management that he would change his behavior. However, there was no change in his behavior and he remained on unauthorized absence for several days and he was served with show cause notice and the workman filed reply thereto explaining the circumstances of his absence by alleging that he was suffering from ailments and his wife was also ill. Finally, he was compulsorily retired from service on 26.08.1999. The Industrial Tribunal also upheld the order of the management and finally the matter reached the Hon'ble High Court as well as Hon'ble Supreme Court wherein action of the management was upheld on the grounds that the workman is in fact guilty of several misconducts from time to time and there was no plausible explanation for his unauthorized absence.

36. I fail to understand as to how the ratio of the above case is applicable to the controversy on hand, inasmuch as the management itself has regularized the previous unauthorized absence of the claimant herein by converting the same into leaves. Moreover, under the norms, a person can be compulsorily retired from service on attaining the age of 55 years without assigning any reasons. Same is the situation in the case of Government servants also whose services are reviewed at the age of 50, 55 and 58, wherein the retirement age is 60 years. As discussed above, in the case on hand unauthorized absence is of 1½ months regarding which also claimant has given plausible explanation. Even otherwise, action of the management in terminating the services of the claimant by imposing punishment of termination does not commensurate with the gravity of the misconduct.

37. At this stage, it is also appropriate to refer to the statement of Dr.Mazumdar, MW1 who has issued medical certificate which clearly shows that she was suffering from an ailment. Certificate issued by this doctor pertains to different parties and not the period of unauthorized absence of the claimant which is 03.01.1994 to 25.02.1992 and from 02.03.1994 till date. However, from the overall reply given by doctor, it is clear that the claimant was personally examined by the said doctor and there is nothing in the statement of this witness who was examined by the management so as to show that the claimant was not suffering from any ailment during the period mentioned in the above certificate. It is clear from statement of the doctor that the claimant was suffering from pain after her pregnancy

as well as spondylitis, which has really corroborated the stand taken by the claimant in reply to the show cause notice when she was seriously ill during this period. There is no suggestion to this doctor that despite suffering from such ailment, the person can attend duties and can also perform normal pursuits of life.

38. During the course of arguments, this Tribunal also wanted to know from the learned A/R for the management regarding rules which deals with the permanent employees/permanent posts held under the management. Even Shri Vikram Malhotra, MW3 was also cross examined on this point by the claimant but he could not give any satisfactory reply as to how case of the claimant herein is not covered under the category of permanent post when she has satisfactorily completed her probation period at the time of her initial appointment as well as when she was given promotion from AG III to AG II in the year 06.01.1990. Even if it is assumed that there was no specific rules or regulations dealing with creation of permanent post etc., in that eventuality, memorandum dated 15.01.1966 as well as subsequent official communication on record clearly suggests that the employee has completed probation period Ex.WW1/7 to Ex.WW1/9, such an employee is to be given benefits which are available to a permanent employee. There is also nothing on record to suggest as to how services of the claimant could have been terminated by a General Manager vide letter dated 01.07.1994 when she was originally appointed by Group General Manager. The post of General Manager is admittedly lower in rank and scale than that of a Group General Manager, which is admittedly on a higher pedestal. Contention of the management that General manager is also of Group VII category does not hold much water when there is no specific rules or regulations cited by the management so as to show and prove the same. Reply given by Shri Vikram Malhotra MW3 in this regard is very evasive and vague as the same is not supported by any rules or regulation.

39. Net result of the above discussion is that the order of termination of the claimant herein is held to be totally illegal and void in the eyes of law as the same is in violation of principles of natural justice as well as provisions of the Act. There is no evidence to suggest that she was gainfully employed during the above period nor any evidence has been adduced by the management in this regard nor there is any cross examination on this point by the management. Since the claimant herein was admittedly working against sanctioned post and was appointed to the same in accordance with the regulations of the management, therefore, she is also liable to be reinstated on the said post with all consequential or cascading benefits. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Date: August 7, 2017

A. C. DOGRA, Presiding Officer

नई दिल्ली, 14 अगस्त, 2017

का.आ. 1947.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 5/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.08.2017 को प्राप्त हुआ था।

[सं. एल-41012/92/2010-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 14th August, 2017

S.O. 1947.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 5/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of West Central Railway and their workmen, received by the Central Government on 14.08.2017.

[No. L-41012/92/2010-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/5/2014

Shri Munna Lal S/o Shri Mullu,
Ex-Gangman, C/o Mukesh Kumar Maurya,
C/o Railway Porter 20 Kholi,
Tar Bahar, Sohagpur,

Distt. Hoshangabad

...Workman

Versus

Divisional Railway Manager,
West Central Railway,
Jabalpur

...Management

AWARDPassed on this 12th day of June 2017

1. As per letter dated 24-12-2013 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-41012/92/2010-IR(B-I). The dispute under reference relates to:

“Whether the action of West Central Railway, Jabalpur in terminating the services of Shri Munna Lal,S/o Shri Mulloo, Ex-Gangman w.e.f. 30-9-95 is legal and justified? To what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Reference w.r.t. workman is proceeded ex parte on 10-7-16. Workman failed to appear despite repeated notice issued to him.

3. 2nd party management filed Written statement. 2nd party submits that despite repeated notices, 1st party did not appear in the reference. 1st party is not interested to proceed with reference. His services are terminated on 13-9-95. The order of termination of 1st party is challenged after lapse of 15 years. That chargesheet was issued to workman on 15-11-89 for unauthorized absence during the period 5-5-89 to 15-11-89. Workman did not submit reply to chargesheet. Enquiry Officer was appointed. Enquiry Officer issued notice to the workman on the available address. Notice was received unserved with postal endorsement “Recipient leave without intimation”. Ultimately Enquiry Officer conducted ex parte enquiry. Report was submitted by Enquiry Officer by 31-5-99. Disciplinary Authority was waiting for long time from June 91 to Sept.95 for imposing punishment. 1st party did not appear before Disciplinary Authority or submitting any kind of report. Service of workman was provided for his defence. Workman was terminated from service. Workman is not entitled to any relief.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of West Central Railway, Jabalpur in terminating the services of Shri Munna Lal,S/o Shri Mulloo, Ex-Gangman w.e.f. 30-9-95 is legal and justified?	Reference could not be decided on merit.
(ii) If not, what relief the workman is entitled to?”	Workman is not entitled to any relief.

REASONS

5. 1st party failed to appear and file statement of claim. 2nd party filed ex parte Written Statement contending that the chargesheet was issued to workman for unauthorised absence. Workman did not participate in Enquiry Proceedings. Enquiry Officer submitted his report. However 2nd party management also failed to adduce evidence. Any documents are not produced by 2nd party therefore I mention that dispute could not be decided on merit. Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 14 अगस्त, 2017

का.आ. 1948.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार द्वारा राजनांदगांव ग्रामीण बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 8/08) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.08.2017 को प्राप्त हुआ था।

[सं. एल-12012/165/2007-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 14th August, 2017

S.O. 1948.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 8/08) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Durg Rajnandgaon Gramin Bank and their workmen, received by the Central Government on 14.08.2017.

[No. L-12012/165/2007-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/8/08

Shri Ram Kumar Patel,
S/o Shri Vishnu Ram Patel,
Village Jewra, PO Jewra Sirsa,
Distt. Durg (CG)

...Workman

Versus

Chairman cum Managing Director,
Durg Rajnandgaon Gramin Bank,
Near Mundra Kunj, G.F.Road,
Rajnandgaon (CG)

..Management

AWARD

Passed on this 14th day of June 2017

1. As per letter dated 1-1-08 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/165/2007-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of Durg Rajnandgaon Gramin Bank in removing Shri Ram Kumar Patel from service is legal and justified? If not, to what relief he is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim. Case of workman is that he was initially appointed as messenger cum sweeper in Durg branch of the Bank on 16-10-95 on daily wages. He sincerely worked to satisfaction of his superiors. He worked more than 240 days every calendar year till 25-9-04. His services were terminated on 25-9-04. His services were terminated on 25-9-04 without issuing notice or issuing chargesheet. Workman was not paid retrenchment compensation. Termination of his services amounts to illegal retrenchment under section 2(oo) of ID Act. Workman further contends he was working from 9.30 to 5.30 PM every day. He was required to open the Bank, doing cleaning work. He was also deployed for clerical work for taking entries of IBC, OBC, making and preparation of cheques. He was required to work as regular employees. He was paid Rs.15 per day which was revised to Rs.35 per day as per award of NABARD and Desai and Sastri Award, he was eligible for regularization and consequential benefits. The employees engaged after him are still working in the Bank. His services are orally terminated without justification violating Section 25-F of ID Act. On such ground, workman prays for his reinstatement with backwages.

3. 2nd party filed Written Statement opposing claim of workman. 2nd party submits that reference is vague. No particulars of alleged engagement of workman are given. The reference is not tenable. Relationship of employer employee doesnot exist between parties. No industrial dispute existed. Claim is not covered as workman under Section 2(s) of ID Act. The defence of workman under ID Act is confined to person including the apprentice employed in the industry followed by appointment orders. After selection process, workman was engaged as casual labour paying daily wages. Workman was not appointed following selection process by the Bank. Workman had not completed 240 days continuous service. Engagement of workman ended at end of day. His disengagement doesnot amount to retrenchment. Branch Manager in order to ensure smooth customer service was authorized to engage casual labours. The wages paid by Branch Manager were reimbursed to him. It is reiterated that workman was not appointed following selection process. His name was not sponsored through Employment Exchange. There are two categories of employees – award staff and officers. Award staff is subdivided in clerk and sub staff. Various bipartite settlement and desai and Sastri Award governs the services of Bank employees. The workman was engaged locally by Gevra Branch Manager., he was not appointed on the post daily wager has no right to the post. Engagement of workman was as per availability of work. As workman had not completed 240 days continuous service, his termination is not violative of provisions of ID

Act. On such ground, 2nd party reiterates that management has not violated Section 25-N,G of ID Act. 2nd party prays for rejection of claim.

4. Rejoinder is filed reiterating contentions in statement of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Durg Rajnandgaon Gramin Bank in removing Shri Ram Kumar Patel from service is legal and justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

6. The term of reference pertains to legality of termination of services of workman. Though workman filed affidavit of his evidence, he remained absent for his cross examination. His evidence cannot be considered.

7. Management submitted application that he doesnot desire to submit evidence in the case. Thus the evidence of workman cannot be considered as he failed to appear for cross examination. Management has not adduced evidence therefore contentions of workman about termination of his services in violation of principles of ID Act cannot be established. For above reasons, I record my finding in Point No.1 in Affirmative.

8. In the result, award is passed as under:-

- (1) The action of the management of Durg Rajnandgaon Gramin Bank in removing Shri Ram Kumar Patel from service is legal and proper.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 14 अगस्त, 2017

का.आ. 1949.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक अॉफ इंदोर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 43/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14. 08.2017 को प्राप्त हुआ था।

[सं. एल-12012/265/2002-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 14th August, 2017

S.O. 1949.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 43/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of Indore and their workmen, received by the Central Government on 14.08.2017.

[No. L-12012/265/2002-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/43/2003

Shri Ram Nagwanshi,
S/o Shri Shrawanlal Nagwanshi,
H.No.1, Tripti Vihar,
Opp Engineering college,
Sanwer Road, Ujjain (MP)

...Workman

Versus

Assistant General Manager,
State Bank of Indore,
Head Office, 5, Yeshwant Niwas Road,
Indore

...Management

AWARD

Passed on this 16th day of June 2017

1. As per letter dated 6-2-03 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/265/2002-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of Assistant General Manager-I, State Bank of Indore in dismissing the services of Shri Ram Nagwanshi w.e.f. 1-12-2001 is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 5 to 11. Case of workman is that he was appointed in State Bank of Indore on 17-2-72. He was promoted to the post of Assistant cashier. He was posted at State Bank of Indore Head office. That National Bank Employees Union bearing No. 5255 is registered on 5-6-94. Workman claims to be elected as General Secretary of said Union since this establishment. As such he is covered as protected employee. That case No. R/29.94 is pending before this Tribunal. That chargesheet was issued to him by 2nd party management on 28-1-99. Shri Chourasia was appointed as Enquiry Officer, A.K.Joshi was appointed as representative of management. Ist party further contends that farsh of enquiry was made. Management was biased holding workman guilty, workman was dismissed from service on 1-12-06. The order of his dismissal is an act of malafide. It is illegal. Appointment of Enquiry Officer is illegal and cannot delegate his powers. Charges alleged against workman are not misconduct under clause 19.5 of Bipartite settlement. Enquiry conducted against him is illegal and void. Workman was not supplied copies of documents. Principles of natural justice were not followed in the enquiry. He was not allowed legal practitioner for his defence violating clause 19.12(c3) of Bipartite settlement. Copies of Enquiry Proceedings was not supplied to him. He suffered prejudice in his defence. That management's witness Ashok had threatened him on 5-3-01 therefore he could not participate in the enquiry proceedings. Enquiry is vitiated as principles of natural justice was not followed. He was not allowed opportunity to cross examine witnesses of management. Enquiry was closed on 8-3-01. As reference proceeding were pending, order of dismissal of workman could not be passed. Management has violated Section 33(C)(3,4 of ID Act. On such ground, workman prays for his reinstatement with backwages.

3. 2nd party filed Written statement at Page 21 to 28 opposing claim of workman. 2nd party reiterates that State Bank of Indore is banking company incorporated under State Bank of India in 1959. Zonal office of the Bank is at Indore. Zonal office carries its administrative and control over business of the Bank. That at relevant time, Shri R.Nagwanshi was posted as Assistant Head cashier at Indore. The service conditions of award staff including workman are covered by Bipartite Settlement between management and employees association. It is alleged that workman committed various irregularities and misconduct renders himself liable for disciplinary action. Chargesheet was served on 29-1-99. Charges are covered under Para 19.5 of bipartite settlement. Workman did not submitted reply to the chargesheet. It was decided to hold enquiry. Shri A.K.Joshi was appointed as Enquiry Officer and R.M.Joshi as Presenting Officer. Workman was given full opportunity for defence to the workman. Enquiry was conducted following procedure and principles of natural justice. Enquiry officer submitted his report holding chargers alleged against workman are proved.

4. It is submitted that after issuing Enquiry Report, showcause notice was issued to workman on 18-6-01 for proved punishment of dismissal. Workman was allowed personal hearing. Workman claimed to be protected workman being General Secretary of Registered Union. Management decided to take action against workman seeking approval from this Tribunal. With regard to protected workman, management submits that Union has not submitted list of protected workman as per ID Rule 1957. As such workman was not covered as protected workman. That R/4/98, 142/99 were raised by workman Shri R.Nagwanshi pertain to mutual transfer not granting special leave etc. punishment of dismissal was imposed against workman is legal. That application under Section 33(2)(b) of ID Act was submitted for approval bearing Case No. CGIT/LC/2/01. Action was approved by this Tribunal vide order dated 22-2-02. Workman was dismissed from service vide order dated 1-12-01. Management reiterates that punishment of dismissal imposed against workman is legal. Enquiry was conducted following principles of natural justice. Charges alleged against workman were proved in the enquiry. If enquiry is found vitiated, management be permitted to lead evidence on merit. on such contentions, management prays for rejection of claim.

5. Ist party workman filed Writ Petition before MP High Court Bench Indore. Vide judgment and order dated 24-7-08, Hon'ble High Court directed to decide reference petition under Section 10 of ID Act as well as complaint

under Section 33-A of ID Act with connected matters within period of 12 months. However as parties were not delinquently prosecuting the procedure, matter cannot be decided within stipulated time.

6. Vide order dated 24-6-10, enquiry conducted against workman is found legal and proper.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the charges alleged against workman is proved from evidence in Enquiry proceedings?	In Affirmative
(ii) Whether the punishment of dismissal imposed against workman is proper and legal?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	As per final order.

REASONS

8. During course of argument as well as in statement of claim, Ist party workman has emphasized that charges alleged against him are not covered under clause 19.5 of bipartite settlement. Chargesheet is produced at Exhibit M-1. Charges alleged against workman pertains to establishing Indore Bank Bachao Samiti and without permission of the Bank, workman acted as organizer of said committee. Without permission of Bank, workman used letter head with address of Rajmohalla branch and its telephone number. Workman deliberately caused wrong impression among the customers. That the use of Bank Bachao samiti affected the business of Bank. The activities of Indore Bank Bachao samiti was carried from Rajmohalla branch. Said committee was accepting complaints from customers against bank. That consumer welfare council was established by workman receiving complaints about internal affairs of the Bank. Workman acted as its General Secretary without permission of the Bank. Workman instigated customer Santosh Singh for submitting complaint on the basis of said complaint vide letter dated 2-11-98, workman sent complaints to the higher authorities of the bank alleging acts of fraud. Complaints were also sent to RBI misusing customer Welfare Parishad. Indore Bank Bachao samiti had also submitted complaint w.r.t. withdrawal of Rs.60,000 from Saving Account 1362, complaint about withdrawal of Rs.15000 from SB Account of Shri R.C.Mahajan etc. copy of Bipartite Settlement is produced for perusal. Charges alleged against workman pertaining to organizing Consumer Welfare Council, Indore Bank Bachao Samiti and holding post of Secretary, Organiser etc. receiving complaints regarding internal working of the bank is certainly covered as misconduct under clause 19.5 of the Bipartite Settlement. So far the submissions of workman that he was protected workman, no documentary evidence are produced that list of protected workman was submitted by Union to management. Besides above, the dismissal of workman by management was approved by this Tribunal vide order dated 22-2-02. Workman is not challenged order passed by this Tribunal therefore said order is binding on Ist party workman. W.r.t. submissions about denial of service conditions during pendency of R/29/94, Hon'ble High Court has directed to decide the reference and said complaint together. The violation of Section 33(A) is required to be decided as complaint. As per Section 33(C)(2) of ID Act, violation of Section 33(1) a,b is established. Complaint is required to be decided as a dispute and copy of award is required to be sent to the Government. The decision in present dispute will be decision in the matter of complaint under Section 33 also.

9. After dealing with those submissions of workman, I devote to the points whether charges alleged against workman are proved. Original Enquiry Proceedings is not produced. Workman in his cross admitted documents of enquiry. Chargesheet is produced at Exhibit M-1, M-2 is order of appointment of Enquiry Officer. Enquiry Proceedings is produced at Exhibit M-4. M-5 shows enquiry was conducted on 4-1-00. Documents were verified. Management proposed to examine 5 witnesses Dharagat Ruiya, Mahajan, Ashok Deshpande, Purohit etc. at page 21 of Exhibit M-5 it is noticed that verification of documents was completed. Copies of documents were supplied to workman as per proceeding at Page 22. The documents Exhibit MEX-1 to 10 appears to be referred in the Enquiry Proceedings. Those documents are not produced along with record of enquiry. However in evidence and witnesses of management, Shri D.L.Purohit and cross examination of workman, genuiness of documents referred to the witnesses was not requested. Witnesses of management Purohit explained that Exhibit MEX-10 related to the complaint against workman about his threatening to the witness. Witness had explained about it to ALC but matter was not recorded in the proceedings. Exhibit MEX-9 was written in the list. Witness claimed that it was not possible for him to tell about the indecent behaviour but workman had tried to spoil his image. That Exhibit MEX-9 was sent by workman recommending permission of Mr. Purohit. Witness has reiterated that his image was spoiled before Committee dealing with his

promotion, he was called for interview 3 times but was not promoted. W.r.t.; MEX-8, the witness has explained said letter was sent for damaging his reputation. Management's witness K.K.Vyas in his evidence in enquiry has stated that MEX-4,5 were sent to Bank Officer, Mumbai. Those complaints were signed by Shri R.Nagwanshi as General Secretary of Consumer Welfare Committee. MEX-47 was returned to the Finance Ministry, Government of India, State Bank of Mumbai. Said document was returned by consumer welfare committee bearing signature of Shri R.Nagwanshi as its Secretary. Address on the letter was shown of Sanver branch, Hardev Niwas. MEX4.2 was written by Shri R.Nagwanshi as Secretary of Consumer Welfare Committee. Exhibit MEX-5 was written by Shri R.Nagwanshi as Secretary of Consumer Welfare Committee. MEX-5 was received at Rajmohalla branch. Said letter was written by one Santosh Singh was not bearing his signature. It was not bearing signature of any employee of Rajmohalla branch. In his further examination, management's witness says that both letters appears to be typed on same typewriter. Witness explained that left side of letter bears address of Shri R.Nagwanshi for contact. MEX-6 shows address of Shri R.Nagwanshi, State Bank of Indore, Dewas. MEX-7 order of punishment was of Shri R.Nagwanshi, the address is shown at Sanver Road, Ujjain. In his cross, witness of management says Exhibit MEX-4.1 explanation of Shri R.Nagwanshi was called. Shri R.Nagwanshi was given understanding in the discussion. That letter dated 2-11-98 sent to Manager, State Bank of Indore, Rajmohalla branch by Santosh Singh bears round seal of the Bank. In his cross, said witness of management claims that MEX-8,9,10 were addressed to R.Nagwanshi, its copies were not address to any other person. Witness of management says he had not given information to Indore Bank Bachao Samiti. Witness in his further cross says w.r.t. documents Exhibit 6 to 19, that action used to be taken after receiving the documents. Witness further says that after understanding given on 1-9-98, no letters were issued from Indore Bank Bachao Samiti.

10. Management's witness Shri R.S.Ruiya in his statement in Enquiry Proceedings says that as per MEX-4.2, amount was credited in account No. 101362 of Santosh Singh amount of Rs.16000 was returned to him on 3,4th November. MEX-5 was addressed to State Bank of Indore Rajmohalla branch. It doesnot bear the date, address was shown Santosh Singh, Vishnupuri Indore. Witness was unable to give reply to some questions without going through the documents. In his further statement, witness says no complaint was received from Santosh Singh. R.Nagwanshi was dealing with work in cash section. Zerox copies of Enquiry Proceedings are partially not ligible therefore typed copies are submitted for convenience. Management's witness Vyas w.r.t. MEX-4.1,4.2 and 5 says complaints were bearing signature of CSE as General Secretary. Statement of witnesses Ashok Deshpande and R.K.Mahajan shows that on request of Mahajan Ashok Deshpande withdrawn amount of Rs.15000 as mother of Mahajan was suffering from severe illness. After returning from Guna, he signed the withdrawal slip around 9.30 pm. There was no complaint about withdrawal of Rs.15000 by Mahajan or Deshpande. Evidence on record clearly shows that workman formed consumer welfare committee and acted as its organizer and submitted various complaints MEX-1 to 10 to higher authorities about the internal bank affairs. He also acted as General Secretary of Indore Bank Bachao Samiti without permission of the Bank. Complaints were submitted about internal working of Bank, irregularities in withdrawals at that time, workman was working as Assistant Head cashier. The acts committed by workman as organizer of consumer welfare samiti or General Secretary of Indore Bank Bachao samiti without permission of Bank established charges alleged against workman. For above reasons, I record my finding in Affirmative.

11. **Point No.2-** In view of my finding in Point No.1 charges alleged against workman are proved. Question remains whether punishment of dismissal imposed against workman is legal. Workman in his evidence on other issues says that he is unemployed. That in his cross examination, workman says he is dealing with 400-500 cases of the employees. He has entered in several settlements with the management. Union is registered. He does typing work of the proceedings. Some litigants used to do typing work from outside. He gets income from house, his son is working as engineer. Workman in his cross says that daily wage bank employee is recognized. Documents are produced at Exhibit W-15 to 30 w.r.t. punishment imposed against other employees. Chargesheet produced that some employees were involved in misconduct of fraud were also reinstated in service. The proved misconduct against workman doesnot involve any kind of fraud or misappropriation causing loss of Bank. In R/29/94 claim of workman for special allowance was rejected.

12. Learned counsel for 2nd party Shri Ashish Shrotri submitted copies of award in R/71/06 pertains to termination of services of Shri V.K.Jain was decided against workman. Evidence discussed in para 11 of the award pertains to dishonest withdrawal of amount. The facts of present case are not available. Said award cannot be relied even for persuasion purpose.

13. Shri Shrotri also relies on ratio held in case between-

Usha Breco Mazdoor Sangh versus Management of Usha Breco Limited and Another reported in 2008(5)SCC-554. Their Lordship held Labour Court concluding that domestic enquiry was conducted in accordance with principles of natural justice and findings in the enquiry report were not perverse yet it interfering with the management decision and holding that no charge was established against workmen. No fresh evidence was introduced by either side before Labour Court. Their Lordship held interference not warranted.

In present case, charges alleged against workman are proved pertaining to workman organizing welfare samiti, Indore Bank Bachao Samiti and submit complaints w.r.t. business of Bank. The charges do not pertain to misappropriation of fraud on part of workman. Therefore ratio in the case cannot be applied to case at hand. The proportionality of punishment can certainly be considered invoking powers under Section 11-A of ID Act even when enquiry is found legal and charges are proved.

Reliance is also placed in case between UP State Road Transport Corporation versus Nanh Lal Kushwaha reported in 2009(8)SCC-772. Their Lordship dealing with Section 11-A of ID Act held Labour Court directing reinstatement with 75 % backwages when two passengers without ticket did not assign reasons either sufficient or cogent, interference by Labour Court was found illegal.

The facts of present case as discussed above proved charges did not pertain to misappropriation or fraud. In my considered view, for proved charges against workman, punishment of dismissal would be harsh and excessive.

In case between Managing Director, Balasaheb Desai Sahakari S.L.Limited versus Kashinath Ganapati Kambale reported in 2009(2)SCC-288. Their Lordship held Labour Court exercising jurisdiction under the Act is entitled to consider whether punishment awarded is wholly disproportionate to the delinquent employee or not. Discretion vested in it must be exercised in a judicious manner.

Considering the proved charges as discussed above, punishment of dismissal imposed appears harsh. Workman was in Bank service since 1978. He already attained age of superannuation. Considering all facts and circumstances, punishment of dismissal deserves to be modified to punishment of compulsory retirement. Accordingly I record my finding in Point No.2.

14. In the result, award is passed as under:-

- (1) The action of the Assistant General Manager-I, State Bank of Indore in dismissing the services of Shri Ram Nagwanshi w.e.f. 1-12-2001 is not proper and legal. The punishment of dismissal is modified to compulsory retirement.
- (2) 1st party workman is entitled to get all retiral benefits as per rules.

R. B. PATLE, Presiding Officer

नई दिल्ली, 14 अगस्त, 2017

का.आ. 1950.—आौद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार राजगढ़ सेहोर क्षेत्रीय ग्रामीण बैंक के प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट आौद्योगिक विवाद में केन्द्रीय सरकार आौद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 58/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.08.2017 को प्राप्त हुआ था।

[सं. एल-12012/257/95-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 14th August, 2017

S.O. 1950.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 58/97) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Rajgarh Sehore Kshetriya Gramin Bank and their workmen, received by the Central Government on 14.08.2017.

[No. L-12012/257/95-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/58/97

Shri Komal Singh Parihar,
S/o Shri Khushal Singh Parihar,
R/o Village Suwaspara,
Tehsil & District Rajgarh(MP)

...Workman

Versus

The Chairman,
 Rajgarh Sehore Kshetriya Gramin Bank,
 Indore Bhopal Road,
 Bhopal Naka,
 Sehore

...Management

AWARD

Passed on this 21st day of June 2017

1. As per letter dated 4-3-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/257/95-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of Rajgarh Sehore Kshetriya Gramin Bank in terminating the services of Shri Komal Singh Parihar S/o Shri Khushhal Singh Parihar w.e.f. 21-8-93 is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 5/1 to 5/5. Case of workman is that he was employed in Rajgarh Sehore Kshetriya Gramin Bank as clerk cum cashier on 4-12-92. Chargesheet was issued to him alleging to Rs.78500 trying to hide the fact by manipulating documents of the Bank. He was suspended on 17-11-92. DE was conducted during 28-12-92 to 18-11-93. On first date of enquiry i.e. 28-12-92, workman accepted charges against him. That during Departmental enquiry, evidence of witnesses of management was recorded. No evidence of defence witnesses was recorded. Only statement of workman was recorded. That he was not allowed proper opportunity for his defence in Enquiry Proceedings. He further submits that workman was told by management if he accepts charge against him, he will not be terminated from service. That investigation memo dated 9-2-93 was sent to him. On 17-5-93, showcause notice was received by Disciplinary Authority. Workman was terminated on 24-8-92. It is reiterated that in appeal preferred by him. The order of dismissal of workman was upheld. The workman submits that he had committed mistake due to mental tension. He himself had disclosed said fact to the management and apologized. Whole amount was deposited in the Bank. There was no intention to commit mistake or make false entries in the Bank books. It was only due to his mistake. He had accordingly stated in the enquiry proceeding about mistake committed by him. As he was assured, his services would not be terminated, he had accepted the charges. Workman prays for his reinstatement with backwages.

3. Management filed Written Statement opposing claim of workman at page 7/1 to 7/5. 2nd party management submits Bank is constituted under Regional Rural Bank 1976. Service conditions of staff/ employees are rejected by staff service regulations of 1983. Workman was terminated for grave misconduct committed during his employment. Workman himself admitted charges in DE. Workman raised present dispute with hope of some benefits. At relevant time, workman was working in the post of cashier cum clerk at Suksara branch in Rajgarh District. In November 1992, Bank noticed that during August 1989, workman had opened account in name of his minor son Harshwardhan, Account No. 751. Workman was kept incharge during leave period of Branch manager. It is alleged that workman fraudulently withdrawn amount of Rs.15000 on 2-9-92, 10,000 on 12-9-92, 35000 on 19-9-92. He shown deposit of Rs.952.95 in account of his minor son and withdrawn Rs.5000 without depositing amount in Account No. 751. He had prepared deposit slip of Rs.1000 in Account No. 751 on 2-1-92. That enquiry was completed against workman after issuing chargesheet. Workman had accepted his mistake. Punishment of dismissal was imposed against workman. Workman was given full opportunity for his defence. Management prays for deciding reference in his favour.

4. Workman submitted rejoinder at Page 9/1 to 9/2 reiterating his contentions in statement of claim.
5. As per order dated 3-6-5, enquiry conducted against workman is found legal.
6. Considering pleadings on record and findings on enquiry, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the misconduct alleged against workman is proved from evidence in Enquiry proceedings?	In Affirmative
(ii) Whether the punishment of dismissal imposed against workman is proper and legal?	In Affirmative
(iii) If not, what relief the workman is entitled to?”	Workman is not entitled to any relief.

REASONS

7. **Point No.1** – As per order dated 13-6-15, enquiry conducted against workman is found proper and legal. Question whether charges alleged against workman are proved or not needs to be decided from evidence in Enquiry Proceedings. Documents of enquiry are produced at Exhibit M-1 to 8. Original DE record is also produced. In the statement of management's witnesses in Enquiry Proceedings, management's witnesses have explained about documents and amount withdrawn by 1st party workman from Account No. 751. Said account was opened in the name of his minor son. Besides it, workman admitted that he committed mistake. Mistake was not committed intentionally in his statement of claim itself. Even workman admitted charges against him before Enquiry Officer and statement recorded in Enquiry Proceedings. Workman had requested to be excused claiming that mistake was not intentional. Evidence in Enquiry Proceeding proves charges alleged against workman. The findings of Enquiry Officer cannot be said perverse. For above reasons, I record my finding in Point No.1 in Affirmative.

8. **Point No.2**- In view of my finding in Point No.1 charges alleged against workman are established from evidence in Enquiry Proceedings. Question remains for consideration is whether workman is entitled for reinstatement. Shri R.C.Shrivastava counsel for workman submits that workman is already struggling in life after dismissal of his service. His family members are suffering. Punishment of dismissal is harsh. Learned counsel for 2nd party Shri A.K.Shashi on the point relies on ratio held in case between-

Chairman cum Managing Director, Coal India Ltd versus Mukul Kumar Choudhuri reported in AIR-2010-SC-75. Their Lordship dealing with departmental enquiry, delinquent admitting charges conclusion arrived at by Inquiry Officer about proof of charges. Absence of any procedural illegality or irregularity in conduct of departmental enquiry has to be held that charges against delinquent stood proved and warranted no interference.

In case between Karnataka Bank Ltd versus A.L.Mohan Rao reported in 2006(1)SCC-63. Their Lordship dealing with proportionality of the punishment and scope of judicial review held gross misconduct of colluding with a Branch Manager. It cannot be seen what other type of misconduct would merit dismissal. In enquiry respondent admitting that he did all the acts necessary for grant of the loan.

In present case, charges proved against workman pertains to illegal withdrawal from Account No. 751 in name of his minor son and such misappropriated amount. Though the amount has been deposited, the proved misconduct cannot be said of lesser gravity.

Shri A.K.Shashi also relied on ratio held in case between Disciplinary Authority cum Regional Manager and others versus Nikunja Bihari Patnaik reported in 1996(9)SCC-69. Their Lordship dealing with what amounts to misconduct while acting beyond one's authority held proof of any loss not necessary. When the Scale I officer of the Bank for a sufficiently long period and in a number of instances allowed overdrafts or passed cheques involving substantial amounts beyond his authority. Such acts could not be treated merely as errors of judgment.

Workman has withdrawn amount from Account No. 751 in name of his son. The absence of intention appears irrelevant.

In case between Nand Kishore Prasad versus State of Bihar and others reported in 1978(3)SCC-366. Their Lordship dealing with dismissal departmental enquiry held before delinquent officer is found guilty of charge, there must be some evidence. Authority must act without bias and predilection and must pass speaking orders discussing evidence.

In present case, the misconduct of 1st party has been proved from evidence in Enquiry Proceeding. There is no pleading about order of dismissal passed by Disciplinary Authority suffering from any kind of infirmity. Considering gravity of proved misconduct, punishment of dismissal cannot be said shockingly disproportionate. No interference in order of dismissal is justified. For above reasons, I record my finding in Point No.2 in Affirmative.

9. In the result, award is passed as under:-

- (1) The action of the management of Rajgarh Sehore Kshetriya Gramin Bank in terminating the services of Shri Komal Singh Parihar S/o Shri Khushhal Singh Parihar w.e.f. 21-8-93 is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 14 अगस्त, 2017

का.आ. 1951.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 105/12) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.08.2017 को प्राप्त हुआ था।

[सं. एल-12011/34/2012-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 14th August, 2017

S.O. 1951.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 105/12) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 14.08.2017.

[No. L-12011/34/2012-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/105/12

General Secretary,
Dainik Vetal Bhogi Bank Karamchari Sangathan,
F-1, Tripti Vihar,
Opp Engg. College,
Ujjain

...Workman/Union

Versus

Regional Manager,
State Bank of India,
RBO, Ujjain (MP)

...Management

AWARD

Passed on this 30th day of June, 2017

1. As per letter dated 27-9-12 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12011/34/2012-IR(B-I). The dispute under reference relates to:

“Whether Shri Ramdas Ghawri is entitled for full time scale wages as paid to regular workers for the period from 7-4-97 to 31-1-2010? To what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. 1st party submitted statement of claim. Workman submits he was engaged as sub staff/ peon from 17-4-97. He was working for whole day for 8 hours in a day. He completed 240 days in a year. He was paid initially Rs.500 per month which was increased to Rs.700,1200 , 1500 per month for working in vacant post of peon. He was paid bonus. His services were terminated without notice. Workman claims difference of wages for the period 17-4-97 to 31-10-10 as per VIth & IXth bipartite settlement, details given in para 4 of statement of claim. Management has violated settlement. On such ground, workman prays for difference of wages as stated above.

3. Management filed Written Statement opposing claim of workman. 2nd party reiterates that workman was engaged temporarily on daily wages at Sarafa branch, Ujjain. His engagement was purely temporary on administrative exigencies. Workman was not engaged against sanctioned vacant post. Workman was not continuously working. Bipartite settlement under which workman is claiming difference of wages are not applicable to casual daily wage employees. Settlement remains effective for period of 5 years. Bipartite settlement are applicable only to permanent employees in subordinate cadre. Above contentions are reiterated by 2nd party. It is submitted that 1st party has not

intentionally filed complete copy of settlement. Documents filed by 1st party do not deal with temporary persons working on daily wage basis. 1st party workman cannot claim benefits of compromise during conciliation proceedings wrt. 3rd party. 2nd party has referred to ratio held in various cases. It is further submitted that part time worker cannot claim parity in salary with regular employees. 2nd party prays for rejection of claim.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether Shri Ramdas Ghawri is entitled for full time scale wages as paid to regular workers for the period from 7-4-97 to 31-1-2010?	In Negative
(ii) If not, what relief the workman is entitled to?	Workman is not entitled to any relief.

REASONS

5. 1st party filed affidavit of his evidence. Workman has stated that he was working as sweeper after promotion of messenger Rajesh Chouhan who was orally engaged as sweeper on 7-4-97. His services were terminated without notice on 31-1-2010. He was not paid retrenchment compensation. He was paid Rs.500, 700, 1200 per month. He was paid bonus for period of his engagement. From his evidence documents Exhibit W-4 to W-9 are admitted in evidence. In his cross-examination, workman says from 2-5-97 to 31-1-2010, he was working in the Bank. He was doing cleaning work. He denies that his engagement was as per need. He denied that he was not continuously working. He was paid bonus for his working days. Documents regarding payment of bonus are produced. Exhibit W-8 is his last pay. He not submitted application in Bank. He was paid at end of the month. He was not paid daily wages. Area of bank is 9900 sq.ft.

6. Management's witness Kamal Kishore Jatav filed affidavit of his evidence. That workman was paid on daily wage basis. Workman was not continuously working from 17-4-97 to 31-1-2010. Workman was intermittently engaged. That benefits as per bipartite settlement are payable only to permanent employees to subordinate and clerical staff. Workman is not entitled to benefit of 6th to 9th bipartite settlement. In his cross examination, management's witness says he does not know claimant workman. He was not posted in Bhopal Mandi branch during 1997 to 2010. He did not take information about the matter from earlier Managers. He claims ignorance whether workman was paid as per policy of the management. Workman was not paid gratuity. Management's witness admitted document which are marked Exhibit W-11,12. Copy of 1st Bipartite Settlement produced by 1st party refers to Para 4.5 of Desai Award. Clause kh provides employees working 3 hours, employees working more than 3 hours, employees working more than 6 hours in a week were to be paid Rs.15 per month. Employees working more than 6 to 13 hours were to be paid 1/3rd pay scale with benefit of annual increments. Zerox copy is marked Exhibit W-1 at R/31/13 is also produced provides the same rate. Documents produced by 1st party Exhibit W- pertains to non-sanction of post full time or part time. The remuneration to be paid for working upto six hours consolidated wages Rs.80 less than 3 hours per week, working 3 to 6 hours in a week- Rs.190 per month. Area 1200 sq.ft working 6 to 13 hours- 1/3rd scale wages. Evidence of workman shows he was working on daily wages. Exhibit W-1,2 are silent wrt remuneration to be paid to daily wage employees. Exhibit W-3 shows that workman was engaged as sweeper at Rs.500 per month. Appointment order also refer to payment of 1/3rd , 1/2 pay scale to part time sweepers. Exhibit W-4 is application submitted by workman claiming Rs.1500 per month. Exhibit W-9 shows working days of 1st party from April 97 to December 97 and wages paid to him. Said document does not show that workman as engaged on part time basis. Exhibit W-10 shows workman was doing sweeping work since past 7 in the Bank. Exhibit W-5/2 to 5/6 shows payments made to the workman. Documents Exhibit 6/1 to 6/2 shows payment of bonus to workman. Any of the documents do not show workman was working on part time basis. Therefore claim of workman for difference of wages as per bipartite settlement cannot be established. For above reasons, I record my finding in Point No.1 in Negative.

7. In the result, award is passed as under:-

- (1) The action of the management is proper and legal.
- (2) Workman Shri Ramdas Ghawri is not entitled for full time scale wages as paid to regular workers for the period from 7-4-97 to 31-1-2010.

R. B. PATLE, Presiding Officer

नई दिल्ली, 14 अगस्त, 2017

का.आ. 1952.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 76/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.08.2017 को प्राप्त हुआ था।

[सं. एल-12011/13/2009-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 14th August, 2017

S.O. 1952.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 76/2009) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 14.08.2017.

[No. L-12011/13/2009-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/76/2009

Regional Secretary,
State Bank of India Staff Congress (INTUC),
C/o Shri S.A.Henry,
43, Prem Nagar, Madan Mahal,
Jabalpur

...Workman

Versus

Dy.General Manager,
State Bank of India, Zonal Office,
Vijay Nagar, Jabalpur

...Management

AWARD

Passed on this 13th day of June, 2017

1. As per letter dated 28-8-09 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12011/13/2009-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of Dy.General Manager, State Bank of India, Zonal Office, Jabalpur in not allowing the R.S.A allowance to the applicant Shri S.A.Henry, Special Assistant, SBI, Jawaharganj Branch, Jabalpur is justified and legal? If not, to what relief is he entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party submitted statement of claim reproducing the order of reference. Ist party workman contends that on 18-5-07, he had requested Dy.General Manager, State Bank of India for releasing RSA allowance due to him as the employees junior to him were allowed to work as RSA. The records are available with 2nd party No.2. that till date, no R.S.A allowance has been paid to the workman, any communication is not received in that regard. It is practice in SBI when junior employees are allowed in a higher allowance carrying post, then the senior employee is also paid the stipulated allowance. That he was working as officiating on higher posts in cadre w.e.f. 1985 and was paid special allowance. This can be verified from the establishment register of SBI branch Jabalpur. He was working as Head Clerk in dispatch section, SBI, Jabalpur from 1990. 4 clerks were working under his supervision in dispatch section. He was advised by Assistant General Manager that some work was delayed for dispatch section and due to it Bank had faced loss of interest. That he was served with chargesheet on 4-4-98 after 7 years. Enquiry was conducted till December 2005. He was exonerated of the charges. Workman was promoted on 1-4-99 as Sr. Assistant and 1-4-01 as Special Assistant. He was paid arrears in May-2007.

3. Management has filed Written Statement opposing claim of workman. 2nd party management submits that workman was appointed as typist on 12-6-75. He was promoted as Assistant on 1-4-99 and Special Assistant on 1-4-01. When officer performing duty of passing officer, is absent from duty, the Branch Manager may ask a clerical staff to officiate in place of the officer. Such clerical staff would be entitled to draw the officiating allowance and shall

perform duty as if he was officiating in place of such officer. The grant of officiating was termed as relieving Sub Accountant and the allowance to which such an employee was entitled was termed as RSA allowance. That as per Chapter 5,6 para 6.3 when workman is facing punishment, he is not entitled to promotion as per note to Para 6.4, employee debarred for promotion is also debarred from officiating capacity. The dispute is raised after 12 years. Claim of workman for RSA allowance not clear. His claim appears to be for the period 1-9-96 to 28-2-97. On account of delay, 2nd party prays for rejection of claim. 2 increments of workman were stopped by way of punishment. Said period of 2 years ended on 1-8-97. Workman was not entitled for officiating duty. On such ground, 2nd party prays for rejection of claim.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Dy.General Manager, State Bank of India, Zonal Office, Jabalpur in not allowing the R.S.A allowance to the applicant Shri S.A.Henry, Special Assistant, SBI, Jawaharganj Branch, Jabalpur is justified and legal?	Denial of RSA allowance to Shri S.A.Henry beyond period of punishment of withholding increments is illegal.
(ii) If not, what relief the workman is entitled to?"	As per final order.

REASONS

5. The term of reference pertains to denial of RSA allowance to workman. The term of reference is silent about the period. Allowance was denied to him. The term RSA is clarified in the Written Statement filed by management as Relieving Sub Accountant Allowance. Ist party workman has claimed that junior employees working with him were allowed RSA allowance. He was not given said benefit.

6. Workman filed affidavit supporting his contentions in statement of claim. That he was working as head cashier in dispatch section, SBI, Jabalpur w.e.f. January 1990. He was served with chargesheet on 4-4-98 after 28-10-91, workman was advised by Assistant General Manager about delay in dispatch and loss of interest. His affidavit is also devoted that he was eligible for promotion. He has also referred to award passed on 23-4-14 by this Tribunal and award dated 11-8-14 in R/34/92. His statement of claim as well as evidence is not disclosing the period he has claimed RSA allowance. In his cross- examination, workman has explained that he is claiming RSA allowance for the period 1996 to 2004. Said period is not written in his statement of claim. In Written Statement filed by the management RSA allowance is paid to clerk who is kept incharge of officer. There is no specific denial that the workman was not paid RSA allowance, such allowance was paid to junior employees. Workman in his cross has admitted the order of punishment dated 30-6-94 which is marked Exhibit M-1.

7. Evidence of management's witness Sashidharan Singh is devoted on the point workman was appointed as clerk cum typist from 12-6-75. He was promoted as Sr.Assistant on 1-4-99. The workman was further promoted as special Assistant on 1-4-91 appears to be typing error. In Written Statement, it is pleaded as 1-4-01. That as per Para 6.3 Chapter 17 of handbook of staff matters, the employees subjected to rigour punishment are not entitled to officiate on higher post. Its copy is produced at Exhibit M-1. Para 6.2(c) provides "Where increment of an employee has been stopped as a measure of disciplinary action, he shall not be eligible for promotion till the period covered by such stoppage of increments expires, notwithstanding whether the 3 year period passes in the meantime or not. Such an employee will not however be ineligible for promotion within the cadre involving an allowance carrying post during the period the stoppage of increment operates. The note provides an employee who is debarred from promotion is also debarred from officiating in that capacity. Exhibit M-2 produced by management shows that increment of Ist party workman due on 1-8-95 was stopped for 2 years. In pursuance of Para 6.2C and note given above, Ist party workman is not entitled for RSA allowance for officiating in higher post till the penalty period ends in August 1997.

8. Management's witness in his cross examination was unable to tell on what basis workman was denied RSA allowance during the period 1996 to 1999. He claims ignorance of award passed in R/34/92. Management's witness in his cross says when officer proceeds on leave and his charge is handed over to the senior most employee, such employee is entitled to RSA allowance. When any enquiry proceeding is pending, such allowance is not paid. Though witness had undertaken to produce officiating register and the witness was directed to produce the same. Affidavit is filed by one Bapuji Swain that RSA register for the period 1-9-96 to 28-2-97 is not traceable. When witness had undertaken to produce the same and the register is not produced, it can be said that if register would have produced, it could have supported claim of workman. As workman has clarified his claim for RSA for the period 1996 to 2004, workman is not entitled to RSA allowance till August 1997. Workman is entitled to RSA allowance for the subsequent period till end of 2004. Workman has personally raised the dispute. Statement of claim is not clear, his evidence is also not clear about the period. Period of which RSA allowance claimed is clarified from evidence in cross examination deserves to be accepted.

9. Learned counsel for 2nd party Shri Shroti argued that the claim is not tenable on account of delay. Learned counsel relies on ratio held in case between-

Prabhakar versus Joint Director, Sericulture Department and another reported in 2015(15)SCC-1. Their Lordship dealing with period of limitation words at any time used in Section 10 held existence of live industrial dispute which has not become a stale claim. Necessity claim if still live or has become stale. Denial of relief on grounds of delay latches, waiver, acquiescence or to preserve industrial peace mounding of relief in cases of belatedly raised live claims.

Claim of 1st party for RSA for the period 1996 to 2004, dispute is raised in 2009. Claim of 1st party workman for RSA allowance for the period from 1-8-94 to end of 2004 cannot be rejected on ground of delay.

Reliance is also placed in case between Union of India versus Ibrahim Uddin and another reported in 2012(8)SCC-148. I have carefully gone through the ratio held in the case pertains to additional evidence to be adduced under Order 41 Rule 27 CP, evidence in view of admission etc.

Ratio held in the case can not be applied to case at hand. For reasons discussed above, I record my finding in Point No.1 that action of management denying RSA allowance from August 1998 to December 2004 is illegal. Accordingly I record my finding in Point No.1.

10. In the result, award is passed as under:-

- (1) The action of the management denying RSA allowance for the period from August 1998 to December 2004 is illegal.
- (2) 2nd party is directed to settle RSA allowance considering the RSA allowance paid to employees junior to workman. 2nd party after settling RSA allowance is directed to pay the same to the workman.

R. B. PATLE, Presiding Officer

नई दिल्ली, 14 अगस्त, 2017

का.आ. 1953.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 283/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.08.2017 को प्राप्त हुआ था।

[सं. एल-12011/36/96-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 14th August, 2017

S.O. 1953.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 283/97) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 14.08.2017.

[No. L-12011/36/96-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/283/97

Shri Rajendra Kumar
S/o Shri Nathu Ram,
Purani Line Resham Mill,
Qr.No.241, Birla Nagar,
Gwalior (MP)

...Workman

Versus

Dy.General Manager,
State Bank of India, Regional Office,
Region-I, Jayendraganj, Lashkar,
Gwalior

Assistant General Manager
 State Bank of India,
 Local Head Office, Hoshangabad Road,
 Bhopal

...Management

AWARD

Passed on this 16th day of June 2017

1. As per letter dated 1-10-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12011/36/96-IR(B). The dispute under reference relates to:

“Whether the action of the management of State Bank of India, Gwalior in terminating the services of Shri Rajendra Kumar, Jagdish Prasad and Shri Narayan Das, Ex temporary messenger w.e.f. 1986 is legal and justified? If not, to what relief the workman concerned are entitled?”

2. After receiving reference, notices were issued to the parties. Dispute under reference pertains to termination of services of Rajendra Kumar, Jagdish Prasad and Narayan Das in 1986. All the 3 workmen filed identical statement of claim at Page 17 to 21, 25 to 39, 43 to 57 with variation about date of their engagement. Ist party workman Rajendra pleaded that he was engaged as messenger on regular pay scale during the period 1812-85 to 22-2-86. Jagdish was engaged on the post of canteen messenger on regular pay scale from 22-4-85 to 1-7-85 and thereafter 2-11-86 to 21-7-87. Narayan Das has pleaded that he was engaged on post of messenger on regular pay scale from 8-4-85 to 10-7-85. Rajendra pleaded that he worked for 265 days till July 96. As per settlement dated 7-11-87 between management of Bank and staff federation, it was agreed that daily wage employees worked during 1-7-75 to 31-12-85 be appointed on permanent basis. That 1580 post of messenger were sanctioned for 1992-93 to 1994-95. He was re-deployed from June 95 as per settlement. In violation of said settlement ignoring he completed 265 days service, his services were terminated in violation of Section 25-F of ID Act. Shri Rajendra Prasad has also pleaded that he belong to SC community. In 1994, management appointed 17 junior employees as messengers. In 997, management appointed 70 daily wagers on permanent basis as coolies, messengers, farrash. The name of such 12 persons appointed as messengers are given in Para 12 of the statement of claim. That he was called for interview on 6-11-92. Management did not disclose the fact of unsuitability. The result of interview was not communicated to him. When dispute was raised before ALC, management filed reply dated 18-7-96 was malafide. It is reiterated that 50 % post were reserved for SC ST, Ex-Servicemen etc. The selection committee had committed serious error overlooking the statutory provisions. The selection committee was constituted of 4-5 members headed by Dy.General Manager. There was no member of any SC ST candidate in the interview committee. The conciliation before ALC failed and dispute has been referred. Workman prays for reinstatement with backwages. Shri Jagdish in his statement of claim has also raised identical pleadings in his statement of claim giving the names of candidates appointed by the management 70 candidates in 1994, 17 candidates in 1995 and 12 candidates in 1985. Shri Narayan Das has raised pleadings about appointment of daily wage employees. All the 3 workmen have alleged violation of settlement by management and prays for reinstatement.

3. 2nd party filed Written Statement at Page 63 to 79 with regard to claim of Rajendra Kumar, 81 to 99 with respect to claim of Jagdish Prasad, Page 101 to 117 with respect to claim of Narayan Das. As per the contentions in Written Statement filed by management, Rajendra Kumar had worked for 67 days during 18-12-85 to 22-2-86. Jagdish Prasad worked for 82 days during 2-11-86 to 23-2-87, Narayan Das worked for 86 days during 8-4-85 to 10-7-85. The claims were engaged as per exigency after their engagement was not required. Engagement of claimants was temporary on need basis. After there was no need of their services, workmen were not engaged. Ist party workman had raised dispute in the year 1992. Said dispute was withdrawn on 14-10-92. Again dispute was raised is referred by Government as per schedule. That the claimants were engaged on contract basis. Employees were free to come to duty on next day. Management were also on liberty not to engage on next day. Non-engagement of workman is covered under Section 2(oo)(bb) of ID Act. Claimants have not completed 240 days continuous service provided under Section 25(b) of ID Act. The dispute is raised after 7 years is not tenable. The claimants have no right for regularization. That settlement was arrived between management and employees federation on 17-11-87 for different categories. Employee who completed 2 months after 1-7-75, employees completed 270 days aggregate temporary service in 36 calendar months. That claimants had not fulfilled the stipulated criteria. Claimants were called for interview on 6-11-97. The committee found them unsuitable. Management denies that the settlement between management and staff association was violated. It is reiterated that Ist party has not violated 240 days during any of the year. That opportunity was given for regular appointment, they failed in the interview. On such ground, 2nd party prays for rejection of claim of all the 3 claimants. The claimants were not appointed by the Bank, they were not in bank employment.

4. Claimants filed joint rejoinder at Page 297 to 305 reiterating their contentions in statement of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of State Bank of India, Gwalior in terminating the services of Shri Rajendra Kumar, Jagdish Prasad and Shri Narayan Das, Ex temporary messenger w.e.f. 1986 is legal and justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workmen are not entitled to any relief.

REASONS

6. The term of reference pertains to legality of termination of services of claimants Rajendra Kumar, Jagdish Prasad and Narayan Das. The terms of reference does not include denial of regularization of their services as per settlement dated 17-11-87 as claimants pleaded in their statement of claim. The pleadings of Ist party claimants w.r.t. not regularizing their services as per settlement dated 17-11-87 is beyond the terms of reference. Shri Rajendra Kumar filed affidavit of his evidence. He stated that he was engaged in full time capacity on post of messenger on regular pay scale during 18-12-85 to 22-2-86. He was re-employed as messenger at main branch of SBI from June 95 to July 96. He belongs to SC. He had passed 8th standard. He was re-deployed as per settlement during June 95 to August 96. Management appointed messengers on permanent basis. He was not appointed. He was called for interview on 6-11-92. Management not disclosed about selection by committee. He was not found suitable for absorption. In his cross-examination, Rajendra says he was engaged in industrial branch during 12-12-85 to 22-2-86 as messenger. Appointment letter was not given to him. That in his statement of claim, he has not stated appointment letter was given to him. He was engaged by Bank as per availability of work. He denies that he not worked after 22-2-86. In his further cross, Rajendra says there was settlement dated 17-11-87. The temporary employees were called for interview. He was also called for interview. He denies that he was not selected by the Committee.

7. Jagdish in his affidavit of evidence says he was engaged as messenger on 22-4-85 to 1-7-85, 2-11-86 to 23-2-87. That as per Desai Award, Item 22 – 23.1, he is deemed to be permanent employee. His services were orally terminated. He passed 8th standard. He was re-deployed in June 95 to August 96 as per settlement. That his name was empaneled since 1992 to 1996. He was called for interview on 6-11-92. Management not disclosed that selection committee had not found him suitable for absorption. In his cross examination, Jagdish says he was working as messenger in Industrial Estate branch during 2-11-86 to 23-2-87. He was working in said branch as canteen boy. However in his further cross, he denies that he was working as canteen boy during the period 22-4-85 to 7-7-85. Canteen was run by the Bank staff. Bank has no concern with its management. He was not given appointment letter. He was engaged as per need of work. He was not called for work after 23-2-87. He was called for interview. He denies that he was not selected.

8. Narayan Das also filed identical affidavit. He was engaged from 4-4-85 to 10-7-85, 1580 post of messengers were sanctioned for the year 1992 to 95. As per settlement between Bank and employees federation, he was eligible for permanent post of messenger. He was called for interview on 6-1-92. Management not disclosed that selection committee had not found him suitable. Documents are in custody of the Bank. In his cross, Narayan Das says he was working in industrial branch Gwalior for 86 days during the period 8-4-85 to 18-7-85. He was engaged on daily wages as per exigency of work. After 10-7-85, he was not engaged in Bank. There was settlement between management and Union. Eligible candidates as per settlement were called for interview. He was called for interview on 6-1-92. He denies that he failed in the interview. That about 00-150 candidate eligible were called for interview. He was not given appointment letter after interview. His affidavit is in English he has signed on it. He denies that he was not selected after interview.

9. Affidavit of evidence of management's witness Shri Ainuddin Anwar is filed supporting contentions in Written Statement filed by the management. Any of the claimants have not completed 240 days continuous service. Claimants Rajendra have worked for 67 days, he not completed 240 days continuous service, he was called for interview on 6-11-92, claimants was not found suitable. Ist party failed to cross examine the witness of management. I do not find any reason for disbelieving evidence of management's witness. Management's witness Ainuddin Anwar filed same affidavit of evidence w.r.t. Jagdish Prasad.

10. The application for production of documents about selection by committee was filed. Documents are not produced by management, written notes of argument is submitted by Ist party claimants that those documents are not produced by management regarding selection, their claim be allowed. However in present case as claim for

regularization is not referred in terms of reference. Even if adverse inference is drawn, claim for regularization cannot be upheld as it is beyond terms of reference.

11. As discussed above, terms of reference does not include claim for regularization/ absorption as per settlement dated 17-11-87, the pleadings in that regard appears beyond the terms of reference. Evidence of all the 3 claimants does not establish that they worked for more than 240 days preceding their termination from service in 1986. Therefore claimants are not entitled to protection of Section 25 of ID Act. Therefore I record my finding in Point No.1 in Affirmative.

12. In the result, award is passed as under:-

- (1) The action of the management of State Bank of India, Gwalior in terminating the services of Shri Rajendra Kumar, Jagdish Prasad and Shri Narayan Das, Ex temporary messenger w.e.f. 1986 is legal and proper.
- (2) Workmen are not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 14 अगस्त, 2017

का.आ. 1954.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 295/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.08.2017 को प्राप्त हुआ था।

[सं. एल-41012/62/97-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 14th August, 2017

S.O. 1954.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 295/97) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Central Railway and their workmen, received by the Central Government on 14.08.2017.

[No. L-41012/62/97-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/295/97

Shri Kailash Manaklal,
Pahrod, Palachourai Railway Station,
PO Palachourai,
Distt. Chhindwara (MP)

...Workman

Versus

The DRM,
Central Railway,
Nagpur

...Management

AWARD

Passed on this 19th day of June 2016

1. As per letter dated 14-10-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-41012/62/97-IR(B-I). The dispute under reference relates to:

"Whether the action of the DRM, Central Railway, Nagpur in not regularizing the services of Shri Kailash Kumar Manaklal after his selection by the duly constituted screening committee and in stopping him from duty w.e.f. 23-5-96 is justified and legal? If not, to what relief the workman is entitled to?"

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 4. Case of workman is that he was engaged as sweeper paying Rs.10 per day at Palachourai station on 1-1-98. He completed 6 months continuous service in August 988. He was not given monthly status on representation through CRMS Railway Union through General Manager, Bombay. General Manager, Central Railway accepted the representation of Union. His services were regularized from 14-3-97 in Grade Pay Rs.740-950. That his services should have been regularized from August 1988 onwards. Railway administration kept grade Rs.750-940 from 14-3-97 whereas he was eligible for said benefit from August 1988. On such ground, workman prays benefit of pay scale Rs.750-940 from August 88 to 13-3-97.

3. Management filed Written Statement opposing claim of workman. Preliminary objection is raised that as per Section 2(32) of Railway Act, Railway Administration means General Manager of the Railway for the purpose of Central Railway Union of India through General Manager is necessary and proper party. Ist party has not impleaded Union of India through General Manager therefore the claim is bad for non-joinder of necessary parties and liable to be dismissed. 2nd party further submits that claim under dispute pertains to regularization of service governed by rules under Article 309 of constitution. This Tribunal has no jurisdiction. 2nd party submits that workman was engaged on contract basis. He was getting service from period 1-1-88 to 23-5-96 from station. That Ist party had worked in broken period on contract basis from 1-88 to 31-12-89. He was continuously working from 1-1-90 onwards. To bring MRCL status, it is required to work continuously for 18 days. Ist party completed said period on 30-4-90. He was given MRCL from 1-5-90 vide order dated 30-10-01. Ist party was continued in service on 31-5-96. He was regularized in service as sweeper from 14-3-97. After regularization of service to Ist party, he was paid arrears of Rs.9089 on 22-11-02. It is reiterated that initially workman was engaged on contract basis and not as casual labour. He was continuously working from 1-1-1988 till 31-12-89. He completed six months continuous service in January 1988 and completed six months in August 1988. This should be strictly proved by workman. He did not produce any document to support his claim. Workman was already paid arrears due to him. There is no merit in claim of Ist party.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the DRM, Central Railway, Nagpur in not regularizing the services of Shri Kailash Kumar Manaklal after his selection by the duly constituted screening committee and in stopping him from duty w.e.f. 23-5-96 is justified and legal?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

5. The term of reference pertains to denial of regularization of services of workman and legality in stopping from service to him from 23-5-96. Statement of claim submitted by Ist party is absolutely silent about legality of stopping him from work on 23-5-96 rather his statement clearly shows that he was regularized on 4-3-97 in Pay Scale Rs.750-940. In his affidavit of evidence, workman has stated that he was engaged at Palachourai station, Distt. Chhindwara on 11-1-1988. He was paid wages of sweeper as per pay order, on 14-3-97. He was regularized. He was still working in the department. In 1990, employees junior to him were called for interview along with him. Junior employees were selected, he was not selected at that time. In 1994, again he was called for interview, junior employees were regularized. However he was regularized in the year 1997. He had submitted several representations since 1984 claiming regularization. From his evidence, documents Exhibit W-1 to 3 are admitted. In his cross examination, workman says for appointment in Railway, order of appointment used to be issued. Casual labours are given casual service card. First appointment letter was issued to him in 1997. He was not given casual service card. He was paid for working at Palachourai station. PWR engaged at station are paid wages preparing the bills. Palachourai station falls in Nagpur Division. He was engaged by station master. In 1988, he was not called for interview. For his selection, he was called for interview in 1990. He submitted panel list of 1990. He admits that the employee is regularized only when post is lying vacant.

6. Management's witness Raju Shankar Ahirwar filed affidavit of his evidence. He is working as Superintendent at Nagpur Division. Workman was engaged on daily wage casually on 1-5-90. He was regularized on 13-3-97. Service book of casual labor is not prepared. Service book is prepared only after regularization of the employee. Workman has not disclosed names of any junior employees regularized. After regularization of workman, he was granted promotion. From evidence of management's witness, documents M-1,2 are admitted in evidence. Management's witness in his cross says as per record, workman was called for interview in 1990. Management's witness admitted documents W-3 to 8. Since 1990, 1st party workman was working as MRCL. Witness of management denies that he was not paid arrears prior to March 1997.

7. In documents Exhibit W-3, working days of workman in the year 88 & 89 are shown 13 days in a month- total 156 days each. In 990, working days of workman are shown 24 to 31 days, 181 days from August 90 to December 90. Working days of 1st party are shown 28 to 31 days in a month. Exhibit W-5 shows list of sweeper given benefit of pay scale Rs.750-940 who were called for interview on 9th & 15th August 1990. Name of workman is appearing at Sl.No.29. in Exhibit W-6, letter dated 24-3-97, list of casual employees accorded benefit of pay scale Rs.72-940 name of 1st party is appearing at Sl.No.59. Exhibit W-1 is certificate issued by Station Master shows that workman was working as sweeper from 1-1-98 in 8 years. Exhibit W-2 letter issued by Divisional Railway Manager calling information about regularization of workman. Exhibit W-8 is letter given by DRM in the matter of payment of arrears after according MRCL status to workman. Exhibit M-1 is copy of service book of workman maintained from 13-3-97 according benefit of pay scale 740-950.

8. During course of argument, learned counsel for 1st party Shri P.Yadav submits that workman has been regularized as sweeper in pay scale Rs.750-940, arrears of Rs.9089 have been paid. Claim w.r.t. stopping workman from duty is not proved.

9. Learned counsel for 1st party P.Yadav however submits that 1st party workman had worked continuously for 128 days in the year 1990. He is entitled to pay scale benefits from 1-5-90 till 12-3-97. Above submissions are opposed by counsel for management Shri S.Mishra submits that workman has not submitted any rules that MRCL is entitled to benefit of pay scale Rs.750-940.. documents produced by workman are not covering the claim for pay scale Rs.750-940 while working as MRCL during the period 1-5-90 till his services were regularized as sweeper on 13-3-97. In absence of such evidence, claim of workman for arrears on pay scale Rs.750-940 while working as MRCL cannot be accepted. For above reasons, I record my finding in Point No.1 in Affirmative.

10. In the result, award is passed as under:-

- (1) The action of the DRM, Central Railway, Nagpur in not regularizing the services of Shri Kailash Kumar Manaklal after his selection by the duly constituted screening committee and in stopping him from duty w.e.f. 23-5-96 is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 14 अगस्त, 2017

का.आ. 1955.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 142/03) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.08.2017 को प्राप्त हुआ था।

[सं. एल-41012/122/2003-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 14th August, 2017

S.O. 1955.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 142/03) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Central Railway and their workmen, received by the Central Government on 14.08.2017.

[No. L-41012/122/2003-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT,
JABALPUR

NO. CGIT/LC/R/142/03

Shri K.L. Khatarkar,
New India Cycle Repairing House,
Badi, Jabalpur

...Workman

Versus

Divisional Railway Manager,
Central Railway, Solapur Division,
Solapur (Maharashtra)

...Management

AWARD

Passed on this 13th day of June 2017

1. As per letter dated 3-9/9/2003 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-41012/122/2003-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of Central Railway, Solapur Division in removing from service to Shri K.L.Khatarkar w.e.f. 8-10-01 on the alleged charges of misconduct vide chargesheet No. JBP/C/Con-PVC-5/2000/02/KLK dated 17.3.4/2000 is proportionate, legal and justified? If not, to what relief the concerned employee is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 4/1 to 4/4. Case of Ist party workman is that he was appointed as TC on 11-8-97 in Central Railway. He was posted at Katni. He had rendered sincere services. He was not communicated any adverse remarks. He was issued memo of Charge under Rule-9 of Railway Servant Discipline Appeal Rules 968 on 17-3-00. In said chargesheet, workman was impugned that while working as TT in T.No. 1261 down Rewanchal Express on 22-9-99/23-9-99 ex Bhopal to Jabalpur, he overcharged Rs. 15/- to a Decoi Passenger to allot a Berth No.60 in S-5 coach. It was also alleged that it was found excess cash of Rs.115/-. He alongwith conductor had illegally collected money from the passenger to permit them to travel in the sleeper coach. That he along with conductor illegally collector money from passengers to permit travel in sleeper coach. That he along with conductor hidden Rs.4925/- in 2nd AC Coach to mislead the vigilance team. That he denied allegations against him. Management had appointed Enquiry Officer for enquiry about the charges. That as per Rule-9 of Railway Service Discipline and Appeal Rules, it is required to give full opportunity to the delinquent official. It is required to appoint Presenting Officer giving opportunity of defence. No Presenting Officer was appointed in the case, therefore enquiry conducted against workman is vitiated. That management had relied 14 documents including statements of witnesses. The same were not produced in Enquiry Proceedings. 5 witnesses were examined on behalf of the management as shown in Memorandum of charge. Their statements were not supplied to him. Enquiry is vitiated. That he was not given opportunity to produce witness Shri S.N.Tiwari to bring truth. He was denied opportunity of reasonable defence. Principles of natural justice were violated. Punishment of removal from service was imposed on 8-10-01 by Assistant Commercial Manager is illegal. It is alleged that charges alleged against workman are not proved. Appeal preferred by him challenging order of removal from service was rejected by cryptic order. The punishment imposed against him is disproportionate. On such ground, workman prays for his reinstatement with backwages.

3. 2nd party filed Written Statement at Page 9/1 to 13 opposing claim of workman. 2nd party raised preliminary objection that workman is holding civil post therefore reference under Section 10(1) of ID Act is not tenable. Remedy of workman may lie before CAT, Jabalpur or Hon'ble High Court. That dispute is raised by workman is not tenable under ID Act. As Ist party workman was paid monthly wages, punishment of removal from service imposed after allowing opportunity for defence to the workman. Before issuing major penalty, chargesheet was issued to workman on 17-3-00. Charges alleged against workman that he received excess amount Rs.15/- for allotment to berth to give it to passenger, excess amount was found with the workman. That workman along with conductor illegally collected money from passenger for permitting to travel in sleeper coach. That workman along with conductor hidden Rs.4925/- in 2nd AC coach to mislead vigilance team. It is reiterated that enquiry was conducted allowing opportunity for defence of workman. Enquiry was adjourned several times for personal reasons submitted by workman. Enquiry Officer submitted his report holding workman guilty. Copy of the report was supplied to workman. Punishment of removal was imposed. Appeal preferred by workman was rejected. It is denied that findings of Enquiry Officer are perverse. While conducting enquiry, principles of natural justice were followed. Documents were supplied to workman. Charges alleged against workman were proved beyond doubt. Punishment imposed against workman is proper and legal. 2nd party submits that

misconduct proved against workman relates to financial misappropriation of fund causing loss to Railway. Punishment of dismissal is proper.

4. Ist party submitted rejoinder reiterating his contentions in statement of claim.

5. As per order dated 10-12-12, enquiry conducted against workman was found not proper and legal. On application submitted by management vide order dated 26-6-14, management was permitted to lead evidence to prove misconduct.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the misconduct alleged against workman is proved from evidence in Enquiry proceedings?	In Affirmative
(ii) Whether the punishment of removal imposed against workman is proper and legal?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

7. As stated above, enquiry held against workman was found vitiated as per order dated 10-12-12. Management was permitted to prove misconduct. Management filed affidavit of evidence of witness Mohd.Mustaffa. His affidavit is devoted on the point that as per instructions of Vigilance, he was associated as an independent witness and deputed to watch and hear the transaction between the decoy and the CE in S-5 coach. After hearing the transaction between decoy and CE in S-5 coach, the matter was informed to vigilance team at Itarsi station. It was seen that CE alongwith other conductor had entered in AC coach. , they all went in AC coach and money was noticed and recovered in presence of Vigilance team and workman. The witness was not cross examined by workman, his evidence remained unchallenged.

8. Management's witness Subhash Chandra Pandey in his affidavit of evidence says he was working as RPF Head Constable No. 301 under Sr.DSC (RPD) Mumbai during the year 1998-99 to 2001-02 and transferred to Nagpur Division in the year 2006. He identified Shri K.L.Khatarkar, he was manning Rewanchal Express running Bhopal to Jabalpur. He was given a 2nd class ordinary ticket by vigilance team Shri Clifton and Salunke Ex Bhopal to Jabalpur and Rs.100/- with instructions to seek reservation from TTE. He was sitting in S-5 coach of train. When workman approached him, enquired about his reservation, he shown his ordinary ticket and requested him for a berth. On that CSE told him that it will cost Rs.50/-. When he insisted for receipt, CSE told it will cost Rs.100/-. He paid Rs.100/- note to CSE , receipt of Rs.65/- was given and returned Rs.20/-. Workman charged Rs.15/- in excess. In his cross examination, management' witness says his reservation was prepared by Shri Khatarkar. He had given Rs.100 note, receipt was issued to him of Rs.65/- and returned Rs.20 charging excess Rs.15/-. Said incident occurred at Itarsi. He had not given report in writing, orally he informed about the incident. Witness denies that Khatarkar returned him Rs.35/-. Evidence of this witness about workman charging excess amount Rs.15/- is not shattered.

9. Ist party workman filed affidavit of his evidence. In his affidavit, he stated that he was appointed as TC in Central Railway on 11-8-97. That chargesheet was issued to him about overcharging Rs.15/- to deploy decoy passenger in down Rewanchal Express dated 22-9-99. That he had allotted Berth No.60 in S-5 coach accepting Rs.100/-. He issued EFR for Rs.65/-. He had returned Rs.20 against Rs.35/- as per the charges alleged against him. In para 5 of his affidavit, workman states that charges are false. He had kept amount in AC coach is also false. In his cross-examination, CSE admitted documents M-1 to M-10, M-13 to 18. In his further cross examination, workman denies that he was also incharge of S-1, S-2 coach in addition to S-5 coach. He was not in charge of AC coach. On 22-9-99, except him no other TT was incharge of sleeper coach. He allotted berth No.60 in S-5 coach to Shri S.C.Pandey. he issued ticket for Rs.65. Shri S.C.Pandey given note of Rs.100 to him. He denies that he only returned Rs.20 to Pandey and retained balance amount of Rs.15/-. In his further cross, Ist party workman admits that M-5 was prepared by Vigilance Officer. Thereafter he issued tickets to the passenger, on search of vigilance officer amount of Rs. 1000 was found with him, excess of Rs.115/- was found with him. Ist party explained that TTE was permitted to retain amount upto Rs.200/-. That amount Rs.200 was his personal cash. The vigilance team had taken him to AC Coach. He denies that in AC coach, Rs.4925/- was recovered in his presence.

10. In document Exhibit M-1, there is clear mention about Shri S.C.Pandey, passenger was handing over Rs.100 with denomination OTW 629008 No. 68639448 for travelling in sleeper coach. Exhibit M-2 shows ticket worth Rs.81, M-3 shows that decoy passenger was issued ticket for Rs.65/-, Rs.20/- was returned to him. Workman kept excess amount Rs.15/-. Said document is admitted by workman. Exhibit M-4 is VFR Ticket of Rs.65/- issued to passenger, M-5 is endorsement made by Vigilance team after checking. M-6 shows excess amount Rs.,115/- found with workman. As

per Exhibit M-7, amount of Rs.1000/- was found with workman. Railway cash of Rs.785/- and excess amount is found Rs.115/-. All those documents are admitted by workman. Exhibit M-8 is statement of Shri Khatarkar recorded by Vigilance team. Workman has signed on it. Rs.100 note No. OTW629008 was found with the CSE. As per Exhibit M-9 amount of Rs.1681 was found with 1st party workman. Documents Exhibit M-13 to 18 are admitted by workman includes the statements of witnesses. Evidence of management's witnesses and documents produced by management proves that workman received excess charge of Rs.15/- from passenger, he was found in excess of Rs.115/-. Workman had denied hiding amount of Rs.4925/-. Documents of Article 6 is denied by workman. However in Exhibit M-10, hiding of amount in AC coach establish the allegation of management, the amount was seized as per Exhibit M-11. Evidence discussed above is sufficient to establish charges alleged against workman. Therefore I record my finding in Point NO.1 in Affirmative.

11. **Point No. 2-** In view of my finding in Point No.1 charges alleged against workman are proved, question remains for consideration is whether punishment of removal against workman is proper and legal. Application was submitted by 1st party for production of documents w.r.t. punishment imposed against conductor. Said application was rejected as per order dated 21-3-2017.

12. Learned counsel for workman Shri R.C.Shrivastava during course of argument emphasized that in chargesheet, there is reference that workman alongwith conductor were involved in hiding the amount and management has failed to produce documents what action was taken against the conductor. Learned counsel emphasized for parity of punishment as conductor is still in service.

13. Management filed affidavit of Mr. Prem Kumar Sharma shows that conductor was transferred to solar division and his record is not available., chargesheet issued to workman finds reference that workman along with his DCR hiding Rs.4925/- in 2nd AC coach to mislead vigilance team. However the chargesheet was issued only to Shri K.L.Khatarkar. No documents are produced that chargesheet was also issued to conductor. 1st party workman could not be allowed parity in matter of punishment. When charges proved against workman pertains to mis-appropriation of amount charging excess amount from passenger.

14. Shri A.K.Shashi relied on judgement in

Writ Petition No. 3545/06 by Bombay High Court in case between Sarveet Chhotelal Tiwari versus Union of India and others. Their Lordship dealing with the similar case was overcharged by Rs.2/- and found excess cash of Rs.122/- held quantum of amount misappropriated is not the yardstick to be considered while awarding punishment in excess of misappropriation, theft, fraud etc. that it is concluded that Disciplinary Authority has the discretion to decide quantum of punishment. In para-5 of the judgment, their Lordship observed in our opinion as we also found that charge of illegal is proved against petitioner. There was no rule for Disciplinary Authority to impose any other punishment other than removal.

Reliance is also placed on unreported judgment in Writ Petition No. 32241/12 by Madras High Court between Union of India versus Registrar CAT Madras etc. the above cited case pertains to demand of Rs.500, excess cash found Rs.605 on personal search. The order by Tribunal setting aside punishment of removal from service was set-aside.

Reliance is also placed on unreported judgement by Bombay High Court Nagpur bench in case between Vinod Chirkutrao Dhone versus Union of India and others. Their Lordship observed the passengers travelling by Railway have no other alternative but to put faith on public servants like the petitioner looking to the urgency of catching the trains and for having railway tickets in long queues. The faith reposed in the petitioner by the Railways as well as by the passengers was betrayed. We do not think that the petitioner deserved any lesser punishment for the one imposed by the employer.

In case between Nand Kishore Prasad versus State of Bihar and others reported in 1978(3)SCC-366. Their Lordship held before delinquent officer is found guilty of charge. Authority must act without bias and predilection and must pass speaking orders discussing evidence.

In case between R.S.Saini versus State of Punjab and others reported in 1999(8)SCC-90. Their Lordship dealing with judicial review held scope of judicial review was limited. If there is some evidence to support findings of Enquiry Officer in its exercise of its jurisdiction insufficiency of evidence.

Reliance is also placed on ratio held in case between Union of India and others versus B.K.Shrivastava. The above cited case pertaining to the cashier in office in Controller of Defence Accounts. Their Lordship held we are therefore of opinion that Tribunal wrongly exercised jurisdiction. The impugned order cannot be sustained. Their Lordship had considered that it is no part of function of Tribunal to substitute its own decision.

In case between Chairman and Managing Director, United Commercial Bank versus P.C.Kakkar, their Lordship held grounds for claiming immunity from acquittal in criminal case based on the same allegation held is not per se such a ground. At most it may be a circumstance to be considered while awarding punishment.

Considering ratio held in all those cases, I do not find adequate reasons to interfere with punishment of removal imposed against workman. I record my finding in Point No.2 in Affirmative.

15. In the result, award is passed as under:-

- (1) The action of the management of Central Railway, Solapur Division in removing from service to Shri K.L.Khatarkar w.e.f. 8-10-01 on the alleged charges of misconduct is legal and proper.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 14 अगस्त, 2017

का.आ. 1956.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार परिचम मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 28/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.08.2017 को प्राप्त हुआ था।

[सं. एल-41012/129/2001-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 14th August, 2017

S.O. 1956.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 28/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of West Central Railway and their workmen, received by the Central Government on 14.08.2017.

[No. L-41012/129/2001-IR (B-I)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/28/2002

Shri Dilip Kumar
S/o Shri Rambahadur Prasad,
Vill-Perari, Post -Kapoor Pakai Thana,
Cherya Railway Station- Motihari,
Distt. East Champaran Bihar

...Workman

Versus

Dy.Chief Mechanical Engineer,
West Central Railway,
Jabalpur

Chief Personnel Officer,
West Central Railway,
Jabalpur (MP)

...Management

AWARD

Passed on this 22nd day of June 2017

1. As per letter dated 25-1-02 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-41012/129/2001-IR(B-I). The dispute under reference relates to:

“Whether the action of the Chief Personnel Officer, West Central Railway, Jabalpur MP is terminating the services of Shri Dilip Kumar S/o Shri Ram Bahadur Prasad, Ex. Bunglow peon w.e.f. 21-6-00 is proper and legal? If not, to what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. 1st party workman submitted statement of claim at Page 23/1 to 2/3. Case of workman is that he was appointed as Bunglow peon on 15-5-96. Chargesheet was served on him for unauthorized absence from 20-2-99 to 26-12-99 for 172 days. He was removed from service on 21-6-00. Workman challenged termination filing appeal which was rejected on 24-8-00. Workman challenged termination filing appeal which was rejected on 24-8-00. Workman further submits that he had brought the facts about illness of his wife and death of his son, he could not attend duty. He was mentally upset. He submitted medical certificate regarding his illness. Certificate was issued by Victoria Hospital, Jabalpur. Management did not consider said certificate while removing him from service. Action of management is arbitrary. Punishment imposed against him is harsh. After termination of his service, his family is facing hardship. He lost his bread. Management did not consider those aspects. After dispute raised by him, the reference is made on 27-11-01. On such ground, workman prays for reinstatement with backwages.

3. 2nd party filed Written Statement opposing claim of workman at page 13/ to 13/2. 2nd party submits that chargesheet for major penalty was issued to workman on 28-12-99 for unauthorized absence from duty in different scales of time. After conducting enquiry under Rule-9 of 1968, workman was removed from service vide order dated 25-6-00. Appeal preferred by workman was rejected by speaking order. earlier workman was issued chargesheet for major penalty on 9-7-99 for unauthorised absence. Penalty of reduction of pay for 3 years with cumulative effect was imposed. 2nd party further submits that workman was not appointed as Bunglow peon under Assistant Mechanical Engineer. That workman was appointed as substitute Bunglow peon. Workman was unauthorisely absent in different scales mentioned in chargesheet dated 28-12-99. After conducting enquiry, penalty of removal was imposed on 21-6-00. Workman was given reasonable opportunity for his defence. Workman was habitual absentee. Chargesheet for major penalty was issued on 28-12-99. Workman was also served warning letter dated 13-7-98, 12-3-99 and major chargesheet dated 9-7-99. 2nd party refers to ratio held in Man Singh versus Union of India. 2nd party submits that punishment imposed against workman is legal. Reference be answered in its favour.

4. Vide order dated 8-2-16, enquiry conducted against workman is found legal.

5. Considering pleadings on record and findings on enquiry, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the charges alleged against workman of unauthorised absence are proved from evidence in Enquiry proceedings?	In Affirmative
(ii) Whether the punishment of removal imposed against workman on 21-6-00 is proper and legal?	In Negative
(ii) If not, what relief the workman is entitled to?”	As per final order

REASONS

6. **Point No. 1-** Enquiry conducted against workman is found legal vide order dated 8-2-16. Question remains for decision whether charges alleged against workman are proved from evidence in Enquiry Proceedings. Next point is whether punishment of removal is proper and legal. Documents of enquiry are produced at Exhibit M-1. Chargesheet was issued for unauthorized absence of 172 days broken period on 8 occasions- 5 days in February 99, 4 days in March 99, 40 days in April to May 99, 109 days during 28-6-99 to 10-10-99, day on 16-10-99, 8 days in November 99, 8 days in December 99. Workman remained absent without submitting application for leave. Statement of management's witness Shyam Parakh shows workman Dilip Kumar was sending application for leave in the office. It is used to be sent to CME. In his further evidence, said witness says workman used to remain absent without submitting application. Workman was unauthorisely absent from 21-2-00 to 4-4-00 i.e. subsequent to the period alleged in the chargesheet. In Enquiry Proceedings, workman did not produce documents submitting application for leave. Therefore evidence of management's witness about absence of workman alleged in the chargesheet is established. For above reasons, I record my finding in Point No.1 in Affirmative.

7. **Point No. 2-** In view of my finding in point No.1 unauthorised absence of workman in broken period is established, question remains for consideration whether punishment of removal against workman is proper and legal. Statement of workman was recorded in Enquiry Proceedings. He explained that his wife was not keeping well. Consequently he was not able to perform his duty perfectly. He was mentally upset. He could not inform management about his absence. He could not submit application for leave. He had assured of regular service in future.

8. Workman had filed affidavit of his evidence but he remained absent for cross examination. On evidence of management's witness, documents of enquiry Exhibit M-1 is admitted. Workman has not produced any documents about his wife was suffering from illness. Explanation given by workman is not supported by cogent evidence.

9. Advocate Gulab Sohane, counsel for management relies on ratio held in case between-

Maan Singh versus Union of India and others reported in 2003(3)SCC-464. Their Lordship considering dismissal order passed after the employee was found in departmental enquiry guilty of unauthorised long absence from duty additional statement in the later part of that order that the period of absence be treated as leave without pay rightly held by forums below to be not amounting to condonation of the absence. Hence not violative of dismissal. Legal position is rather settled that punishment of dismissal for short period of unauthorized absence is not appropriate.

In present case, unauthorized absence established against workman is a broken period. As per Written Statement filed by management, workman was served with chargesheet on 9-7-99 for major penalty. Said chargesheet covers unauthorized absence of workman during the period February to May 99. Thus unauthorized absence alleged in chargesheet Exhibit M-1 needs to be excluded. After excluding said period, unauthorized absence of workman is much lesser period. Considering above aspects, punishment of removal imposed against workman appears quite harsh and disproportionate. For above reasons, punishment of removal imposed against workman deserves to be modified to withholding 3 increments of workman with cumulative effect. Workman deserves to be reinstated without backwages. Accordingly I record my finding in Point No.2.

10. In the result, award is passed as under:-

- (1) The action of the Chief Personnel Officer, West Central Railway, Jabalpur MP is terminating the services of Shri Dilip Kumar S/o Shri Ram Bahadur Prasad, Ex. Bunglow peon w.e.f. 21-6-00 is not proper and legal.
- (2) Order of removal of workman dated 21-6-00 is quashed. 2nd party is directed to reinstate workman with continuity of service without backwages. 3 increments of workman be withheld with cumulative effect.

R. B. PATLE, Presiding Officer